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FCC Record

A comprehensive compilation of decisions, reports, public notices and other documents of the Federal Communications Commission of the United States.

FEDERAL COMMUNICATIONS COMMISSION

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-157

In re Applications of

SACRED HEART UNIVERSITY, INC
(hereafter "Sacred Heart")
Channel No. 210B1
Noyack, New York — File No. BPED-891215MK

CONNECTICUT PUBLIC BROADCASTING, INC.
(hereafter "Connecticut")
Channel 210A
Southampton, New York — File No. BPED-900306MD

LONG ISLAND UNIVERSITY
(hereafter "LIU")
Channel 210B1
Noyack, New York — File No. BPED-900516MA

LONG ISLAND EDUCATIONAL TV COUNCIL INC.
(hereafter "LI Educational")
Channel 210A
Southampton, New York — File No. BPED-900516MB

For Construction Permit for
a New Noncommercial
Educational FM Station

STATE UNIVERSITY OF NEW YORK
(hereafter "State")
Channel 211B1
Stony Brook, New York — File No. BPED-900516MH

For Modification of the
Facilities of Station WUSB(FM)

HEARING DESIGNATION ORDER

Adopted: May 31, 1991; Released: June 17, 1991

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new noncommercial educational FM station, and for modification of the facilities of Station WUSB(FM).

2. *Preliminary Matter.* Sacred Heart and LI Educational have applied to the National Telecommunications and Information Adminstration for funding. However, we have not been notified that any of these applicants have received such funding at this time. Accordingly, a financial qualifications issue will be specified below.

3. *LIU.* LIU has indicated that it has the following complaints pending, which were filed with the Equal Employment Opportunity Commission and the Human Rights Commission: (1) *Solar v. Long Island University*, case No. 2-E-A-89-135064A, EEOC Charge No. 16G-89-2801: and (11) *Blakes v. Long Island University*, Case No. 2A-ER9O-140379E. Accordingly, an appropriate condition will be specified below.

4. None of the applicants have indicated that an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency, and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49,560, published October 24, 1978. In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a time-sharing issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiation with a view toward establishing a share-time arrangement.

5. The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Sacred Heart and LI Educational, whether the applicant is financially qualified.

2. To determine: (a) the number of other reserved channel non-commercial educational FM services available in the proposed service area of each ap-

plicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

3. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That in the event a construction permit is awarded to LIU as a result of this proceeding, its grant will be subject to whatever action, if any, the Commission may deem appropriate, in light of the outcome of the complaint proceedings listed in paragraph 3 above.

9. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-158

In re Applications of

Q 3 Corporation (hereafter "Q 3")	File No. BPH-900529MD
Donald L. Jones (hereafter "Jones")	File No. BPH-900530ME
Leslie E. Gradick (hereafter "Gradick")	File No. BPH-900530MG
Joseph I. Kendrick (hereafter "Kendricks")	File No. BPH-900531ME

For Construction Permit
for a New FM Station on Channel 271A (102.1 MHz)
in Bolingbroke, Georgia

HEARING DESIGNATION ORDER

Adopted: May 31, 1991; Released: June 17, 1991

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Q 3	January 18, 1991
Gradick	January 14, 1991

3. Section II, Item 6 (new form) of FCC Form 301 (June 1989) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Q 3 has not completed Item 6 correctly. Q 3's application gives a post office box number as the residence address for Quimby Melton III and Louisa Melton. Accordingly, Q 3 must submit anamendment which gives all the information required by Section II, Item 6 to the presiding Administrative Law Judge within 30 days of the release of this Order.

4. Data submitted by the applicants indicate there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

7. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Q 3 and Gradick ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

8. IT IS FURTHER ORDERED, That Q 3 shall submit an amendment which contains the information required by Section II, Item 6 (new form) of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

9. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in

such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-515

In re Applications of

RADIO ASSOCIATES, INC.	File No. BPH-88072OMQ
DOXA, INC.	File No. BPED-880722MB
ANTHONY J. BOVE, JR.	File No. BPH-880722MJ
HELEN SPARKS QUINN	File No. BPH-880722MP
THE MOODY BIBLE INSTITUTE OF CHICAGO	File No. BPED-880725MB
BULLDOG BROADCASTING, INC.	File No. BPH-880725MD

For Construction Permit for New FM Station, Channel 270A, Brownsburg, Indiana

MEMORANDUM OPINION AND ORDER

Adopted: June 7, 1991; Released: June 18, 1991

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. Just briefly after the Board adopted its *Memorandum Opinion and Order*, FCC 91R-45, adopted June 4, 1991, remanding this case, it belatedly received (in the ordinary distribution run of pleadings) a Mass Media Bureau Motion to Certify, filed with the Commission's Secretary on June 3, 1991,[1] requesting that the Board certify to the full Commission a legal issue regarding financial amendments decided in our prior *Memorandum Opinion and Order*, FCC 91R-32, released April 18, 1991.[2]

2. In view of the serious issues added in our June 4 *Memorandum Opinion and Order*, and the underlying factual questions giving rise to those issues, the Bureau's motion is now moot in any event. For the reasons more fully discussed on our June 4 remand order, the appeal pleadings and conflicting claims of Radio Associates, Inc. raise new and serious character questions about that applicant, which questions must first be resolved at hearing, irrespective of the legal issue resurrected *ex nihilo* by the Bureau's rather tardy certification motion.[3] We urge the Bureau to participate fully in the trial of the character and financial issues we have just designated, since the Commission itself has several times stated its deep concerns with the circumstances that ultimately ended its reliance on applicant financial certifications. *See Revision of Form 301*, 4 FCC Rcd 3853, 3858-60 (1989); *Public Notice* 62 RR 2d 638, 639 (1987). We assume, most naturally, a commensurate concern on the part of its operating Bureau.

3. ACCORDINGLY, IT IS ORDERED, That the Motion to Certify, filed June 3, 1991, by the Mass Media Bureau IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

[1] Our June 4, 1991 *Memorandum Opinion and Order* responded to the appeal of Radio Associates, Inc. from its dismissal from this proceeding by the ALJ on May 6, 1991. *See Memorandum Opinion and Order*, 91M-1549, issued May 2, 1991 (ALJ). Unfortunately, the Bureau did not provide a courtesy copy of its June 3, 1991 motion to the Board (or informally alert the Board to its filing).

[2] In that regard, we must comment also on the untimeliness of the Bureau's request for certification to the Commission. The legal question that the Bureau now seeks to certify to the Commission was effectively joined when the ALJ rejected the Bureau's interpretation of the application amendment rules by *Memorandum Opinion and Order*, FCC 91M-423, released February 4, 1991, a ruling he reaffirmed, but permitted appeal upon, in his subsequent *Memorandum Opinion and Order*, FCC 91M-978, released March 18, 1991. The Bureau did not suggest certification at that time.

Furthermore, at no time while the substantive dispute was under appeal before this Board did the Bureau motion, pursuant to § 0.363 of the Rules, to certify the matter to the Commission; nor did it seek reconsideration or certification upon issuance of our *Memorandum Opinion and Order*, FCC 91R-34, released April 18, 1991, affirming the ALJ. Indeed, it did not even file in support the May 20, 1991 appeal of Radio Associates from its dismissal, or request certification at *that* time.

[3] We also note that the precise legal issue that Bureau seeks to certify has been raised again in the ongoing case of *WPIX, Inc.*, MM Docket No. 90-641. There, however, and relying upon the Board's April 18, 1991 order in this proceeding, the Bureau has taken a substantive position wholly consistent with the Board's April 18 ruling in *this* case and *directly contrary* to the position it reasserts again in its instant motion to certify. *Compare Memorandum Opinion and Order*, FCC 91M-1541, released May 3, 1991 at n.1 (Bureau contends that challenging applicant show diligence and "good cause" to amend a prior negative financial certification). The Board believes, of course, that the Bureau's substantive position in *WPIX, Inc.*, is legally correct; and the Bureau has not (at least in that particular case) suggested otherwise in the slightest degree. *See* Docket No. 90-641, *Prehearing Conference*, Tr. 25-27 (Bureau Counsel).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-94

In re Applications of

BIBLE BROADCASTING NETWORK, INC.	File No. BPED-880301ML
WEISS BROADCASTING OF NOBLESVILLE, INC.	File No. BPH-880301MQ
BROADCAST COMMUNICATIONS, INC.	File No. BPH-880301MZ
BEN UMBERGER	File No. BPH-880301PD

For a Construction Permit
For a New FM Station in
Noblesville, Indiana on
Channel 230A

Appearances

Gary S. Smithwick on behalf of Bible Broadcasting Network, Inc.; *Donald J. Evans* and *Andrew D. Fisher* on behalf of Weiss Broadcasting of Noblesville, Inc.; *Nathaniel F. Emmons* on behalf of Broadcast Communications, Inc.; and *Stephen C. Simpson* on behalf of Ben L. Umberger.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE EDWARD J. KUHLMANN

Issued: June 11, 1991; Released: June 19, 1991

1. The four remaining applicants and four more, now dismissed, were designated for a comparative hearing on their proposals on March 26, 1990. *R & B Ltd.*, 5 FCC Rcd 1901 (1990). The petition to enlarge against BCI and the following issues will be resolved in this decision:

1.(a) To determine whether BCI misrepresented or lacked candor by representing that Julio Fernandez has no other attributable media interests.

(b) To determine whether BCI transferred control of station WYIC in 1985 without prior Commission approval.

(c) To determine whether, in light of the foregoing, BCI has the requisite qualifications to be a Commission licensee.

2. To determine which of the proposals would, on a comparative basis, best serve the public. interest.

3. To determine, in light of the evidence. adduced pursuant to the specified issues, which of the applications should be granted, if any.

2. A prehearing conference was held on June 4, 1990. *Order*, FCC 90M-713, released April 9, 1990. Oral hearing sessions were held on October 29, 1990 (Tr. 28-288), October 30, 1990 (Tr. 289-530/560), and October 31, 1990. Tr. 561-779. The record was closed on October 31, 1990 (*Order*, FCC 90M-3484, released November 2, 1990) and reopened on April 24, 1991 to receive Bible's amended Exhibit 1. *Memorandum Opinion and Order*, FCC 91M-1447, released April 25, 1991. Proposed findings and conclusions were filed by the four remaining parties on January 11, 1991 and replies were filed on February 20, 1991.

FINDINGS OF FACT

Issue 1: Whether BCI misrepresented Julio Fernandez's media interests and whether BCI transferred control of WYIC in 1985 without Commission approval.

Julio Fernandez's Media Interests

3. Julio Fernandez is a vice president and secretary of BCI. BCI Exh. 1, at 2. Mr. Fernandez is one of two officers and he owns 65 shares of BCI common stock, for which he is entitled to one vote for each share. BCI, from December 1, 1978, when the corporation was established, had one class of common stock; on the eve of the cutoff date for amendments of right in this proceeding, BCI added two additional classes of common stock, Class A and Class B, which transferred approximately 90% of the voting control to Emmett DePoy and diminished the voting power of all the other stockholders. Mr. Fernandez is the only stockholder to own Class B common stock; he owns one share which gives him an additional 415 votes. BCI Exh. 1, at 2. This gives him 5.07% of the control of BCI and 13.02% of the equity. *Id.* His votes are second only to Emmett E. DePoy, who has 91.33% of the vote and 19.92% of the equity. *Id.* BCI has six other stockholders and they own approximately 67% of the equity and 3.6% of the voting power. *Id.* BCI currently has no directors and the shareholders perform the duties normally performed by directors, unless those duties are delegated to the officers. BCI Exh. 1, Tab B, at 6. This voting structure was reported to the Commission on May 4, 1988, the day before applicants could no longer change their comparative case. Tr. 305; BCI Exh. 1, at Tab C. The amendment changing the voting structure increased Mr. DePoy's voting power from 15.5% to 91.33% and decreased Mr. Fernandez's voting power from 10% to 5%. Tr. 313. While the other stockholders' voting power changed to negligible amounts, their equity holdings remained approximately the same as before the amendment.

4. Julio Fernandez is also vice president of Wabash Valley Broadcasting Corporation. BCI Exh. 1, at 3. Wabash Valley is the licensee of WTHI-AM-FM-TV, Terre Haute, Indiana, WFTX-TV, Cape Coral, Florida, and WOGX-TV, Ocala, Florida. *Id.* Wabash Valley owns two radio networks, Network Indiana and Agri-America. *Id.* Network Indiana provides news programming to 46 radio stations in Indiana. Weiss/BCI Jt. Exh. 3. Agri-America supplies programming to 65 radio stations, most of which are in Indiana. *Id.* Network Indiana develops news and

editorial content for a network feed to small radio stations throughout the state. Weiss Exh. 28. Since January 1, 1987, Mr. Fernandez has been vice president and general manager of TelX Entertainment, the video syndication and production division of Wabash Valley. BCI Exh. 2, at 4. TelX produces and sells television programs to broadcast stations throughout the country, including Indianapolis. Tr. 568-69. Mr. Fernandez also has involvement with some of the broadcast operations of Wabash Valley and with the company's management. Tr. 581-82, 587-89.

5. BCI did not identify Mr. Fernandez's media interests in response to questions 7 and 8 of FCC Form 301. Weiss Exh. 7. It did not disclose his interest in any other pleading; it was brought to the Commission's attention by another applicant in the proceeding. BCI concedes in its testimony that Mr. Fernandez has been an officer of Wabash Valley throughout this proceeding. BCI Exh. 2, at 4, 7; BCI Exh. 1, at 22.

6. Mr. DePoy asked each of the BCI stockholders, including Mr. Fernandez, about their media interests before the application was completed. BCI Exh. 1, at 22. BCI used a questionnaire provided by its communications counsel which asked whether BCI stockholders were officers, directors, or managerial employees of an entity holding other broadcast interests. BCI Exh. 1, Tab X, at 2. Mr. Fernandez was aware that he was a manager but he answered none. BCI Exh. 1, Tab X, at 7. Mr. DePoy also asked the shareholders to identify "employment or other positions that might arguably allow you to influence competition between the two interests" and relationships "with program production or syndication companies or advertising agencies that do business with broadcasters in the area to be served by the proposed FM station." BCI Exh. 1, Tab X, at 3. Mr. Fernandez said he had none. BCI Exh. 1, Tab X, at 10. Mr. Fernandez was aware that he held the interests Mr. DePoy asked him to identify (Tr. 594-96) but he said that he probably did not read the questions carefully. He explained that he spent "10-15 minutes tops" reviewing the form, although he was aware that his answers would be supplied to the Commission. *Id.*

7. Mr. Fernandez did not identify himself on the questionnaire as an officer of Wabash Valley. BCI Exh. 1, Tab X. He said he thought he just had an officer's title and the authority of an officer but that he was not an actual officer of the company. BCI Exh. 2, at 7. Nevertheless, he knew that he had been vice president when he headed the same business at BCI and that his authority was the same at both places. Tr. 607.

8. In addition, when BCI sold the programming and syndication business to Wabash Valley, Mr. Fernandez had insisted as part of the transaction that he also become a vice president at Wabash Valley. Tr. 598-99; BCI Exh. 2, at 7. It was provided for in the contract. Tr. 599. Mr. Fernandez's business cards and business stationery identify him as vice president and he identifies himself as one in his day-to-day business. Tr. 599. He was also directed by Wabash Valley lawyers to sign business contracts indicating that he is a vice president and general manager of Wabash Valley, doing business as TelX Entertainment. Tr. 600-02. Wabash Valley's by-laws require that corporate vice presidents sign contracts on behalf of the company. Weiss Exh. 32, at 6.

9. Mr. Fernandez was asked by Mr. DePoy and BCI's counsel whether he was an officer of Wabash Valley and to explain his connection, but he did not verify his status with Wabash Valley. Tr. 606. He said that he just did not think it was important or necessary to make the call. *Id.* When counsel asked him, he said he was not an officer. Tr. 597. Mr. DePoy said he did not know that Mr. Fernandez was a vice president of Wabash Valley. BCI Exh. 1, at 22- 23. But he knew that when Mr. Fernandez did the same job for BCI he was a vice president. Tr. 242. He also knew that Fernandez held himself out as a vice president of Wabash Valley. Tr. 342. Mr. DePoy was aware that Mr. Fernandez was a manager of Wabash Valley and he suspected that Mr. Fernandez would have had to indicate that position on the form he gave him. Tr. 351-52, 341-42. He also knew that Mr. Fernandez's interest in Wabash Valley could result in a comparative demerit for BCI. Weiss Exh. 21, at 20-21; Tr. 356. Mr. DePoy, despite his questioning of Mr. Fernandez, did not try to verify his suspicion with someone else. BCI Exh. 1, at 23.

10. Sandra and Robert Borns failed to disclose that they are significant shareholders and principals in Heritage Partners Management which has broadcast interests near Indianapolis. Tr. 361-62. Their interest was not revealed in answer to counsel's questionnaire and not until shortly before the hearing. Tr. 361-63. When their interest in Heritage Partners Management was revealed, Ms. Borns still did not reveal that she was a trustee of Butler University which operates an FM station that encompasses Noblesville. Weiss Exhs. 22 and 23; Tr. 364-66. James Morris, another stockholder, is also a Butler trustee. Tr. 466. They did not reveal their interest even though the media questionnaire used by counsel requested identification of positions such as trustee of a university that operates a broadcast station. BCI Exh. 1, Tab X, at 2.

BCIs Control of WYIC

11. BCI operates WYIC, an AM station in Noblesville, Indiana. In the latter part of 1985, James Mathis, then president of BCI, listed the station for sale with a broker. Tr. 673. In September 1985, Mr. Mathis called David Cassidy, a BCI stockholder, to advise him about an offer that had been made to purchase WYIC. Tr. 661. Mr. Cassidy said that in September 1985 he went with Mr. Mathis to talk with William Osewalt and some people who represented the potential purchaser about the sale. Tr. 663. The meeting was held in Indianapolis at Skeet's Music Shop, which was also the production facility for the Children's Radio Network. Tr. 667. Mr. Osewalt controlled the Children's Radio Network (CRN). Weiss/BCI Jt. Exh. 2, at 6-7. CRN was acquiring or owned a station in Jacksonville, Florida and Mr. Osewalt believed expanding his network to Indianapolis would be a good idea because CRN's production facilities were located there. Tr. 667; Weiss/BCI Jt. Exh. 1, at 28-30.

12. At the September meeting, Mr. Osewalt did most of the talking. Tr. 667. He described the children's radio concept and he and Mr. Mathis talked about changing the format of WYIC to children's programming. They agreed that that would be done a few days later. They discussed how WYIC would need tape equipment which it did not have in order to run CRN's programs. There was no discussion of providing any compensation to WYIC for carrying CRN's programming. Tr. 667-72. BCI never paid CRN anything at all for its use of the programming. Weiss

Exh. 12; BCI Exh. 1, Tab W. CRN did not pay BCI for serving as an outlet for its programming. *Id.* This was not the normal arrangement with stations that carried CRN programming. Charles E. (Skeet) Bushor, one of the owners of CRN, stated that the arrangement with other network stations called for payment of a fee plus some barter. Weiss/BCI Jt. Exh. 2, at 8.

13. Mr. Osewalt gave Mr. Mathis an "Agreement to Purchase and Sell," which he had signed on September 16, 1985, and which he indicated was his offer to buy WYIC. Tr. 672-75; BCI Exh. 3, Tab A. The "Agreement to Purchase and Sell" contemplated that "a formal Purchase and Sale Agreement" would be executed within thirty days which would contain the same terms as those agreed to in the September 1985 agreement to purchase. BCI Exh. 3, Tab A, at 2. The document provided that the purchase price would be $780,000, and it was stated in the agreement that the agreement was accompanied by a buyer's check of $10,000 to evidence good faith. *Id.* Mr. Cassidy said he did not see the check, and there was no discussion of it. Tr. 676. The agreement did not provide for WYIC to carry the CRN programming. BCI Exh. 3, Tab A. Mr. Mathis signed the document, dating his signature September 24, 1985. Tr. 674-75; BCI Exh. 3, Tab A, at 4. Mr. Cassidy claims that ten days later Mr. Mathis told him he did not think there would be a sale because Mr. Osewalt was not going to be able to raise the money. Tr. 683.

14. WYIC's logs reflect that on September 28, 1985, the station changed from its big band format to CRN's programming for children. BCI Exh. 1, at 16 and Tabs J, K. Charles and Judy Bushor and Mr. Osewalt explained the new format to WYIC's staff a day or two before it began; they explained how the tapes operated. Weiss Exh. 5, at 1-2; Weiss/BCI Jt. Exh. 1, at 18-19; Weiss/BCI Jt. Exh. 2, at 12; Tr. 112-13. CRN provided WYIC with the appropriate tape machine to play CRN's two-track tapes. Weiss/BCI Jt. Exh. 2, at 18-19.

15. Emmett DePoy said that Mr. Mathis told him that CRN would be better than big band or contemporary music. BCI Exh. 1, at 14-15. Mr. Morris said that Mr. Mathis also told him he was enthusiastic about CRN programming, purportedly because it filled a niche in the market and was family-oriented. BCI Exh. 4, at 4. According to Mr. Cassidy, Mr. Mathis believed the format would do well because it would fill a void in the market. Tr. 683-84.

16. During the period BCI ran the children's format, it continued to run the Cubs baseball games, several sports shows and other non-entertainment programming. BCI Exh. 1, at 18-19. The Cubs games were on the end of a season long contract. Tr. 194. The sports shows were pre-sold, sponsored shows which BCI had no choice but to carry. Tr. 180-81. WYIC carried any PSAs that it got in, regardless of its format. Tr. 185. A short public affairs show produced by Caroline Churchman for BCI continued to broadcast, but its emphasis changed to items of interest to children. Tr. 195. The majority of WYIC's typical broadcast day was CRN programming. BCI Exh. 1, Tabs M, P.

17. No one who testified could remember exactly how long the children's format ran, but the program logs indicate that the format began on September 28, 1985 and continued until probably February 1986. BCI Exh. 1, at 16-18. When the format was terminated, Mr. Mathis called C. Kevin Weinman, WYIC's program director, to his office, told him the agreement to sell the station had fallen through, and asked how quickly he could change back to the big band format. Weiss Exh. 5, at 3. Mr. Weinman testified that that was in December 1985 and that the change was made immediately. *Id.* In January 1986, Mr. Mathis told the Noblesville Daily Ledger that listener and advertiser response to the CRN format had been favorable, that advertisers had shown interest in reaching the station's audience, and that he hoped to benefit from the lucrative advertising market aimed at pre-teens and their parents. BCI Exh. 1, Tab N. In its prehearing filings to the Commission in this case, BCI represented that the format was dropped because it was unpopular. Weiss Exhs. 9 and 11.

18. Mr. Weinman recalls that the children's format was being carried on Christmas Day 1985. Tr. 199. He does remember that the format was changed at the same time that Mr. Mathis told him the sale of the station to CRN had fallen through. Weiss Exh. 5, at 3. Thomas Lofton, an owner of and legal counsel to BCI about the sale, believes it was on December 18, 1985, that he was advised that the sale would not take place. BCI Exh. 3, at 3. Mr. Lofton's recollection is inconsistent with both his telephone call notes on that day and his billing record. *Cf.* BCI Exh. 3, at 3 with Tabs H and I. They reflect he was working on the contract for WYIC's sale and that his discussion with Osewalt's attorneys was about a Jacksonville station acquisition, not about ending the transaction for WYIC. Mr. Lofton could not recall exact details about any other material fact about BCI's affairs except his being told on December 18, 1985 that the purchase of WYIC would not take place. Tr. 504-05. He was able to make that statement without reference to his notes.

19. When BCI and CRN agreed to the sale in September 1985, WYIC was a failing AM station that was losing money. BCI Exh. 4, at 4. The station was thought to be worth $280,000 to a maximum of $350,000, according to David Cassidy. Tr. 680. The offer of $780,000 was extraordinary, Mr. Cassidy believed. *Id.* Mr. Cassidy said he did not believe anyone could be as naive or stupid as Mr. Osewalt. *Id.* Mr. Cassidy said that Mr. Mathis believed he had found an angel. Tr. 681. Mr. Cassidy reported that Mr. Mathis did not even read Mr. Osewalt's purchase agreement before he signed it. Tr. 676.

20. After WYIC began broadcasting the CRN format, Mr. Weinman, who was WYIC's program director, was told that he would be taking direction from Judith E. Bushor, who was programming director for CRN, after the format was put into place. Weiss/BCI Jt. Exh. 1, at 5; Weiss Exh. 5, at 2; Tr. 129-30. Ms. Bushor had daily contact with Mr. Weinman (Tr. 116) and while Ms. Bushor denies she did, Mr. Weinman said that she set up and orchestrated personal appearances by the Uncle Zack character. Tr. 193. She also directed Mr. Weinman to send her ASCAP/BCI music diaries in order that she could complete them (Tr. 125-31) and told the WYIC staff to conduct demographic surveys based on responses to trivia questions. Tr. 192. WYIC used as its station identifier, "Children's Radio Network" or "Radio Aahs." Tr. 121; Weiss/BCI Jt. Exh. 1, at 58.

21. CRN also was involved in directing sales at WYIC. Two people were hired by Mr. Osewalt in conjunction with "people from the radio station." Weiss/BCI Jt. Exh. 1, at 22. The Osewalt sales people were introduced to the radio staff as new sales people. Tr. 135. They reported directly to CRN, and worked out of CRN's local offices,

and gave their revenues to CRN. Weiss Exhs. 11 and 12. Charles E. Bushor, who was an officer, stockholder, and program producer for CRN, said he assumed that BCI billed the advertisers for the commercials which CRN's people had sold. Weiss/BCI Jt. Exh. 2, at 24-27, 37.

22. CRN produced the shows which ran on WYIC and it provided WYIC with the tape equipment necessary to play the programs. Weiss/BCI Exh. 2, at 18. CRN did not normally provide its affiliates with such equipment. *Id.*

Comparative Proposals

Bible Integration

23. Bible is a Virginia non-profit corporation governed by a seven member board of directors. No member of the board proposes to work at managing the Noblesville station. Bible Exh. 1.

Diversification

24. Bible, at the close of the record was the licensee of 18 FM stations, 1 AM station and 10 FM translators. Bible Exh. 1. Since the close of the record Bible has added one more AM station, one more FM station and one more translator. Petitions for Leave to Amend, filed November 14, 1990, February 15, 1991, April 5, 1991, and May 3, 1991 by Bible Broadcasting Network. Three of Bible's directors are officers and directors of Bible Broadcasting Network International, Inc., which hold licenses or permits for 14 FM translators. *Id.* Bible's stations are located in eight states, Tennessee, South Carolina, Kansas, Georgia, Florida, North Carolina, Virginia, and New York. *Id.* Bible does not propose auxiliary power generating equipment at its facility. *Id.*

Weiss

25. Weiss is an Indiana corporation. Weiss Exh. 1, at 1. Mary Bowen Weiss is president, secretary and treasurer and the only voting shareholder. *Id.* She owns 250 shares, which represent all the authorized voting shares. *Id.* There are nonvoting preferred shares which are held as follows: David B. Weiss, Ms. Weiss' son, owns 125 shares preferred Class B, Thomas W. Binford owns 50 shares preferred Class A, Fred C. Tucker and Milton J. Fineberg each own 30 shares preferred Class A, and Douglas D. Church owns 8 shares preferred Class A. *Id.* Mr. Binford's stock is held in a revocable trust by Indiana National Bank. *Id.* Mary Weiss formed the corporation with one class of stock in February 1988. *Id.*, at 2. It was established to apply for this channel at Noblesville. The preferred stockholders became part of the ownership of Weiss in March 1990. *Id.* While Ms. Weiss and her son own 76.1% of the equity, they have only contributed one-seventh of the funds raised from stockholders. Tr. 55, 57-58.

Integration

26. Ms. Weiss proposes to become the general manager on a full-time basis, 40 hours per week. Weiss Exh. 2, at 1. She will oversee the day-to-day operation of the station and develop all station policies. *Id.* She will have all department heads report to her, oversee implementation of EEO policies, set goals for sales, and insure compliance with regulatory rules and policies. *Id.*

27. Ms. Weiss has lived within the station's proposed service area for 18 years. Weiss Exh. 2, at 1-2. She now lives in Carmel, Indiana which is within the proposed service area. *Id.* Ms. Weiss has participated in organizations within the service area. She has been a member of the Indiana Chapter of American Women in Radio and Television. *Id.* She was an officer of that organization from 1981 to 1986. *Id.* Through the organization she raised funds for charity in 1985-1987, 1988 and 1989. *Id.* It has supported community needs in Indianapolis. *Id.* She has belonged to and been an active participant in the PTA at her children's school in Carmel. *Id.*, at 4. In Carmel she coached youth baseball in 1987, cheerleaders in 1975, sponsored the gymnastics team in 1981-82, and the boy's swim team in 1979-80. *Id.* She has belonged to the hospital guild at St. Margaret's Hospital. *Id.* As a member of the hospital guild she has helped to expand the care available, raised funds, and entertained patients. She has been a member of the guild since 1973. From 1984 to 1988, Ms. Weiss participated in various fund raising activities. *Id.* For some of them, the Indianapolis Art League and the Noblesville Chamber of Commerce, she promoted events as part of her employment at a broadcast station. Tr. 82-83; Weiss Exh. 2, at 3-6.

28. From 1979 to the present Ms. Weiss has been an account executive at radio stations in Indianapolis. Weiss Exh. 2, at 2-3. She has not been in management in these positions. Tr. 68-74. She has always worked in sales. Tr. 74-76. Ms. Weiss is female and is entitled to a preference. Weiss Exh. 2.

29. Weiss and its owners have no mass media interests. Weiss Exh. 3. Weiss proposes emergency power generation equipment at its studio and transmitter facilities. Weiss Exh. 4.

BCI

30. BCI is an Indiana corporation founded in 1978. Its current officers are Emmett E. DePoy, president, assistant secretary and treasurer, and Julio Fernandez, vice president and secretary. BCI Exh. 1, at 1. BCI does not have a board of directors; the duties usually performed by directors are performed by the shareholders. BCI Exh. 1, Tab B, at 6. BCI has eight stockholders who hold common stock. Mr. DePoy holds one share Class A common stock which entitles him to 8,540 votes and Mr. Fernandez owns one share Class B common stock which gives him 415 votes. BCI Exh. 1, at 3. Mr. DePoy has 91.33% of the voting stock. *Id.*, at 5. BCI was founded in 1978 by James B. Mathis, who is deceased, Mr. DePoy, and James T. Morris. *Id.* Currently, Mr. Morris and Mr. DePoy each own 100 shares of common stock. *Id.* Mr. DePoy has been a stockholder since December 1, 1978 and initially served as an officer and director until March 19, 1985. *Id.* Mr. DePoy represents he gave up his positions to save money for the station; but the record reflects that his role as an officer and director was nonpaying. Tr. 252-54. Mr. DePoy was reinstated as a director on June 5, 1986, after the death of Mr. Mathis, and he again became an officer on January 7, 1987. *Id.*

31. Mr. Mathis, one of the three founders and president, died on May 20, 1986. BCI Exh. 1, at 11. Julio Fernandez became president, on June 5, 1986, replacing Mr. Mathis. *Id.*, at 13; Tr. 258. Mr. DePoy was one of the three largest stockholders when Mr. Mathis died but he was not elected president until January 7, 1987, after Mr. Fernandez left his employment with BCI. Tr. 248.

32. BCI amended its voting structure on the eve of the comparative cut-off date. Tr. 305. Mr. DePoy's voting power was increased from 15.5% to 91.33% when he was issued the one share Class A stock worth 8,540 votes. Tr.

305-07. Mr. Fernandez's voting power decreased from 10% to 5%. Tr. 313. The shift in voting power gives all other stockholders nominal voting power of 1% or less. BCI Exh. 1, at 3-4. The shareholders' equity remained the same. *Id.* Mr. DePoy said that the reason for the shift of voting control to him was to recognize the authority he has exercised since January 1987. Tr. 307-08. Mr. DePoy also said it was done so he would not have to get approval and acceptance for decisions he made. Tr. 308. The voting change, however, did more than shift simple control. Tr. 309. Full control did not transfer to Mr. Depoy initially after he became the manager of WYIC because Mr. Fernandez continued as president. It was only after Mr. Fernandez's employers, Wabash Valley Broadcasting, objected to his position as president of another media company that Mr. DePoy was elected to replace him. Tr. 274, 276. But even after Mr. DePoy was elected president to replace Mr. Fernandez, he was not permitted to sign BCI checks. Tr. 298. And when he was given the authority to sign checks, they had to be co-signed by Mr. Morris or Keith D. Weppler. Tr. 286-87, 294-96. The shareholders approved changes in the bank signatories. Tr. 447. When the shareholders were asked to loan money to BCI, Mr. Weppler, not Mr. DePoy, developed the loan amounts for each shareholder. Tr. 319-44. Mr. DePoy did not keep the BCI checkbook; instead it is kept by Michael Browning, a major BCI lender, at his office. Tr. 299. BCI's minutes reflect that Mr. DePoy did not participate in major negotiations for loans carried on by the company. Tr. 277-86. Moreover, after Mr. DePoy became president, the shareholders began to hold monthly meetings to supervise BCI's affairs. Tr. 301-02. Mr. DePoy sought shareholder approval before raising his salary. Tr. 448-49.

33. Mr. DePoy and shareholder Thomas M. Lofton testified that Mr. Fernandez was given 1 share of Class B common stock worth 415 votes to "reward" him and to compensate him for his "skill and experience" in broadcasting. Tr. 310-11, 519-25. This reason is not supported by the record which indicates that the award of voting stock did not increase his equity and had no monetary value (Tr. 311, 522); his actual voting power decreased from 10% to 5% (Tr. 313), and no one ever told Mr. Fernandez why he was given one share of Class B stock. Tr. 312, 324-25, 627.

Integration

34. Mr. DePoy proposes to work full time, 40 hours per week, as the general manager. BCI Exh. 1, at 4-5. He will be in charge of all aspects of the day-to-day operation. *Id.* He will have responsibility for implementing all station policies. *Id.*

35. Mr. DePoy lives in Carmel, Indiana, which is seven miles from Noblesville and within BCI's 3.16 mV/m contour. BCI Exh. 1, at 7. He has lived there for all but two of the last 29 years. *Id.* Carmel and Noblesville are in Hamilton County; they are separated by an unincorporated area. *Id.* Mr. DePoy served on a Conference of Cities committee twenty years ago, in 1970-71. He helped arrange hotel rooms for mayors attending the conference in Indianapolis. BCI Exh. 1, at 9. From 1973 to 1976 he belonged to the Carmel/Clay Kiwanis Club; from 1979-80, and 1987 to present, he has belonged to the Nobelsville Elks Lodge; from 1987 he has belonged to the Carmel and Noblesville Chamber of Commerce; in 1988-89 he was on the Chamber's festival committee. *Id.* Mr. DePoy considers the membership in the Elks and Chambers of Commerce as business activities in his role as station manager. Tr. 410-12.

36. Mr. DePoy has worked at managing stations from June 1979 to the present, except for 1986. BCI Exh. 1, at 5. From 1950 to June 1979, he was an engineer, or worked in sales, at broadcast stations. *Id.*

Diversification

37. Mr. DePoy has pledged that BCI will divest its interest in WYIC if BCI receives a grant. BCI Exh. 1, at 2, 3. Julio Fernandez is vice president of Wabash Valley Broadcasting Corporation. *Id.* Wabash Valley is the licensee of WTHI-AM-FM-TV, Terre Haute, Indiana; WFTX-TV, Cape Coral, Florida; and WOGX-TV, Ocala, Florida. *Id.* Wabash Valley owns two radio networks, Network Indiana and Agri-America. *Id.* Network Indiana supplies news programming to 46 radio stations in Indiana. Weiss/BCI Jt. Exh. 3. Network Indiana develops news and editorials for a network feed to small radio stations throughout the state. Weiss Exh. 28.

38. Mr. Fernandez is general manager of Wabash Valley's TelX Entertainment which produces and syndicates video programs. BCI Exh. 2, at 3. It sells television programs throughout the country including Indianapolis. Tr. 568-69. TelX produces and syndicates the Indianapolis 500 Mile Race parade to 70% of the country. Weiss Exh. 27, at 2335. TelX also operates and programs the electronic message board at the Hoosier Dome and the Indianapolis Speedway to audiences that could number 61,000. *Id.*, at 2332. Tr. 575. Mr. Fernandez has a direct involvement with some of the broadcast operations of Wabash Valley and with top management of Wabash Valley. Tr. 581-82, 587-89. Mr. Fernandez has attended BCI board meetings and shareholder meetings and he is an officer and the second largest voting stockholder. BCI Exh. 2, at 3-4. He does not plan to work at WYIC. *Id.*

39. Sandra Borns owns 4.4% of the voting stock in Heritage Partners Management, Inc. BCI Exh. 8, at 1. Heritage is the general partner of University Broadcasting Company, L. P., licensee of WAZY-FM, Lafayette, Indiana and WBWB-FM, Bloomington, Indiana. *Id.* Heritage owns 34.98% of Heritage Venture Partners II, L. P. Heritage II is the 97% limited partner of University Broadcasting Company. *Id.* Robert A. Borns is a director of Heritage and owns 5.7% of its stock. BCI Exh. 7, at 1. Ms. Borns also serves on the Board of Trustees, the governing body of Butler University, the licensee of WAJC-FM, Indianapolis. Weiss Exh. 22, at 3. James T. Morris also serves on the board of trustees. Weiss Exh. 22. at 3. Mr. Morris claimed there were between 35 and 50 trustees (Tr. 484) but the University ownership report reflects that there are 27 members. Weiss Exh. 22 at 3. WAJC's service area includes Noblesville. Tr. 367-68. The Board of Trustees has the authority to make decisions about the radio station without any intervening committee. Tr. 485-86.

40. Gene E. Sease at the cutoff date owned 40 common shares of BCI. He was on the board of WFYI-TV, which he promised to sever. BCI Exh. 1, at 4 and Tab E. He is no longer a shareholder of BCI. BCI Exh.1, at 4.

Auxiliary Power

41. BCI proposes auxiliary power equipment at its transmitter and studio to permit operation of the facilities in the event of a power failure. BCI Exh. 1, at 14.

Preference for Daytime AM Station WYIC

42. BCI has been the licensee of WYIC-AM from June 1, 1979 to the present. BCI Exh. 1, at 10. It is a daytime only station licensed to Noblesville, Indiana. *Id.* John Mathis was general manager of the station from March 1, 1985 until he died on May 20, 1986. *Id.*, at 11. Mr. Mathis owned 100 shares of common stock which was 17.2% of the voting stock of BCI. *Id.* During that time he managed both the station and BCI's video syndication and production business. *Id.* Because Mr. DePoy was not active in BCI after 1985, he said he did not know how much time Mr. Mathis spent on WYIC business after that year. Tr. 408. Mr. DePoy claimed in his testimony that Mr. Mathis was a full-time employee of BCI but he could only say how the station was run before 1985. BCI Exh. 1, at 11-12; Tr. 408-10.

43. Mr. Fernandez was the general manager of WYIC from May 20, 1986 to December 31, 1986. BCI Exh. 1, at 13. He was not an owner of BCI during that period. BCI Exh. 1, Tab E; Tr. 243. Mr. Fernandez claims he spent 20-25 hours a week on the average as general manager of WYIC. BCI Exh. 2, at 2. He continued to perform his former, full-time role supervising BCI's syndication business. Tr. 610-11. Mr. DePoy claims he was acting general manager beginning on January 1, 1987 (Tr. 247-48), but Mr. Fernandez represents that he was the general manager until February 18, 1987. BCI Exh. 2, at 3. Mr. DePoy said in his direct testimony that he did not become the permanent general manager until February 18, 1987. BCI Exh. 1, at 8. On page 7 of his testimony, he said he was the full-time general manager beginning on January 1, 1987. And on pages 13-14 of his testimony, Mr. DePoy states that he was elected general manager by the directors on January 7, 1987. He claims on those pages that he was not full time but only worked 30 hours per week from January 1, 1987 to February 18, 1987. Throughout the period January 1, 1987 to March 1, 1988, Mr. DePoy owned 15.5% of BCI's voting stock and worked 40 hours per week at the station. BCI Exh. 1, at 14.

Ben L. Umberger

44. Ben L. Umberger is an individual applicant. Umberger Exh. 1, at 1.

Integration

45. Umberger proposes to work 40 hours per week at the station as the general manager. *Id.* Umberger will have complete management responsibility and oversee all aspects of the station operation. *Id.* Mr. Umberger only plans on having four employees and he could not explain how he would manage the station. *See* Tr. 768-775. He claims to have run a station with two employees and only occasional part-time help. Tr. 769.

46. Mr. Umberger has testified in other proceedings that he has resided in Florida since 1976 and that he was unwilling to change his life and relocate away from Florida. Tr. 750, 762-63. He currently is chief operator at WNLT(FM), Clearwater, Florida and WHBO(AM), Pinellas Park, Florida and site manager for Lodestar Towers, North Palm Beach, Florida. He states he will end that employment. Umberger Exh. 1.

47. Mr. Umberger represents that he will move to Noblesville, Indiana if he receives a grant. Umberger Exh. 1. From 1970 to the present Mr. Umberger has worked in broadcasting. *Id.* He was a broadcast owner from April 1984 to August 1986 at WIKX, Imokalee, Florida where he worked on weekends. *Id.*

48. In the last few years Mr. Umberger has applied for stations in other communities. He applied for Micanopy, Florida, but dismissed his application for a payment to dismiss in 1985. Tr. 754-55. He was the majority owner of an applicant for Van Buren, Indiana, but again he dismissed his application pursuant to settlement payment in 1987. Tr. 755-56. In 1989, Mr. Umberger was an individual applicant for Rockledge, Florida; again in a settlement with a payment to him, he dismissed his application. Tr. 756. He also proposed to be integrated full time at the Rockledge station one month after he had filed the Noblesville application. Tr. 732-35. He currently has an application pending for Chandler, Indiana where he has not proposed integration but would if he does not receive a grant here. Tr. 735-36.

Diversification

49. Umberger did not provide evidence about any media interests.

Auxiliary Power

50. Umberger has not proposed to use auxiliary power generating equipment.

CONCLUSIONS

BCI principals exhibited indifference and carelessness to the Commission's requirements that it report the media interests of its owners; BCI's principals deliberately withheld Julio Fernandez's management role at Wabash Valley Broadcasting.

51. Julio Fernandez is vice president and secretary of BCI. He owns 13.02% of BCI's equity and 5.07% of the voting power. Mr. Fernandez has been a longtime officer of BCI and, at one point, he managed BCI's AM station, acted as its president, and was a director until the corporation stopped having directors on February 17, 1988. He has been, from the time BCI filed its application to the present, the manager of Wabash Valley Broadcasting's program production and syndication business and a vice president of Wabash Valley Broadcasting, a multiple licensee with stations at Terre Haute, Indiana and two communities in Florida. The Commission requests on Form 301 that applicants identify broadcast interests held by its officers and stockholders. Mr. Fernandez holds a sufficient interest in BCI to require that BCI identify any broadcast interest he might have in a broadcast company. Mr. Fernandez's position as an officer and manager in Wabash Valley is such an interest and should have been reported. Aside from Mr. Fernandez's interest in both BCI and Wabash Valley, there are other connections between the two licensees. Wabash Valley purchased the program production and syndication business Mr. Fernandez manages from BCI and Wabash Valley had a right to purchase this FM from BCI under certain circumstances.

52. Before BCI's application was filed, its counsel submitted a form to Mr. Fernandez which required that he identify his interest in Wabash Valley. It was explained to Mr. Fernandez that the information would be used to complete the Form 301 application and it was evident

from the detailed questions that the information sought had to do with the interests BCI principals had in other broadcast or media entities. Mr. Fernandez did not identify his Wabash Valley interest when he filled out the form and when he was directly asked by BCI's counsel if he was an officer of Wabash Valley he said he was not. It is apparent from his testimony that at best his responses to the questionnaire exhibited carelessness about matters which would eventually be relevant to the Commission's consideration of BCI's application, and at worst, it appears that Mr. Fernandez deliberately withheld information about his role in Wabash Valley to avoid any problem for BCI's proposal and his job at another broadcast entity. Mr. Fernandez's interest in BCI had previously raised an issue with his current employer, Wabash Valley; he was required to resign as BCI's president because Wabash Valley objected to his performing that role at BCI. Mr. Fernandez knew he was a vice president of BCI, he knew that his work involved the production and distribution of programs for broadcast stations and that his job was with a multiple licensee. There is no evidence that he did not understand the questions asked by his counsel. In fact, BCI's counsel, in addition to the questionnaire, asked Mr. Fernandez if he was an officer of Wabash Valley and Mr. Fernandez did not reveal that he was. Emmett DePoy, BCI's president, who was responsible for obtaining answers to the ownership questionnaire, also knew or should have known about Mr. Fernandez's position at Wabash Valley. He knew Mr. Fernandez had been a vice president at BCI before the programming business headed by Mr. Fernandez was sold by BCI to Wabash Valley and he knew that Mr. Fernandez had insisted that Wabash Valley make him a vice president as part of the sales contract between BCI and Wabash Valley. He also undoubtedly knew that Wabash Valley had early on in Mr. Fernandez's employment with that company objected to Mr. Fernandez being President of BCI and a manager of Wabash Valley because when that happened Mr. DePoy was elected as Mr. Fernandez's replacement.

53. Neither Mr. Fernandez nor Mr. DePoy took any steps to confirm whether Mr. Fernandez's role at Wabash Valley needed to be reported. All that would have been required was a telephone call and they did nothing, although it is apparent from their testimony that they knew there was reason to expect that Mr. Fernandez would need to report his position with Wabash Valley. Mr. Fernandez claims that he did not think that his position as an officer of Wabash Valley actually made him an officer of the company. That response in light of the record facts is unbelievable. He signed contracts on the company's behalf, he held himself out as an officer and he had insisted that he become an officer. In addition, BCI claims that as a matter of law Mr. Fernandez's interest in Wabash Valley is not attributable to BCI. Whether or not it is, is beside the point:[1] At the time BCI filed its application, BCI believed Mr. Fernandez's interest in Wabash Valley had to be reported. Despite that belief Mr. DePoy ignored what he knew about Mr. Fernandez's interest in Wabash Valley. Moreover, Mr. Fernandez knew what his interest was and he withheld its existence from BCI's counsel, for reasons that appear to serve his own self-interest in maintaining a role in two media companies. BCI principals did not examine the nature of Mr. Fernandez's media interest, even though there was ample reason to do so. But when the question was raised in this hearing, BCI then argued that the interest was not reportable.

54. Mr. Fernandez and Mr. DePoy admit they knew about Mr. Fernandez's management position at Wabash Valley and they did nothing to verify whether it needed to be reported. They not only knew that Mr. Fernandez was a manager at Wabash Valley but they both knew that in 1987 Mr. Fernandez had been replaced as president of BCI because Wabash Valley had objected to his being president of BCI and an officer and manager at Wabash Valley. It can only be concluded that Mr. Fernandez, having previously had trouble with his dual interests, was reluctant to raise the matter again. This possibility is particularly evident in light of counsel's questionnaire which put Mr. Fernandez on notice that his position at Wabash Valley was significant enough to be reported in BCI's application for this FM facility. This incident exhibits not only careless indifference to material facts but deliberate withholding of them from the Commission by BCI's only officers and controlling stockholders. Standing alone this single failure is not enough to disqualify BCI, although it weighs on the ultimate conclusion that BCI has not demonstrated that it will be a reliable licensee.

In 1985 BCI permitted a potential purchaser to determine the format of the facility, to choose and supervise who sold advertising time, and to direct BCI's staff in broadcasting the programs which he supplied.

55. BCI currently operates WYIC(AM) in Noblesville. The station, which broadcasts during the day, was listed for sale in 1985. At the time the president and general manager of the station was James Mathis. (Mr. Mathis, who was one of the original owners of BCI, died before this application was filed.) In September 1985, Mr. Mathis signed an "Agreement to Purchase and Sell" WYIC to William C. Osewalt. Mr. Osewalt also signed the agreement. The purchase price was $780,000. David Cassidy, a BCI stockholder, went with Mr. Mathis when he signed the agreement. Mr. Cassidy said the station was facing severe financial difficulties and Osewalt was viewed as an angel. Mr. Cassidy pointed out that the station was believed by BCI to be worth, at a maximum, $350,000. Within days of signing the purchase agreement, WYIC changed its format to children's programming which was supplied by Mr. Osewalt's company, Children's Radio Network. Before WYIC changed the format it broadcast big band recordings for entertainment and its nonentertainment programs were routine news, public affairs, and religious programs.

56. Mr. Mathis signed the sale agreement on September 24, 1985 and the station logs reflect that the format changed to children's programming on September 28, 1985. When WYIC changed from big band to children's programming, Mr. Osewalt and two other CRN officials, Charles and Judy Bushor, came to WYIC to explain to the staff how the new format would work. CRN also provided WYIC with the appropriate two track tape equipment to broadcast the programs. While Mr. Mathis apparently remained general manager of the station, there is no evidence that he had any part in directing the programming changeover, except that he agreed to it.

57. Mr. Osewalt hired two sales people to sell time during WYIC's children's programming. They were located at his Indianapolis studio, and under his control. There is no indication that WYIC received any compensation from CRN for carrying the programs, or that it paid CRN for the programs. While WYIC continued its nonen-

tertainment programs the station was obligated to continue them by contract. The record reflects that a public affairs program which the station carried did, however, begin to focus on the issues of interest to children. Judith Bushor, the program director of CRN, gave directions to WYIC's staff about how to program CRN's material. The staff was told to follow her directions. Ms. Bushor also arranged public appearances for WYIC staff members to promote the new programs. WYIC even changed its station identifier to one CRN wanted. There is evidence that CRN did not involve itself with its other affiliates in the same way. Mr. Bushor stated that usually CRN did not provide equipment to its affiliates; that it usually did have compensation agreements with them; and that CRN did not hire local sales people as it did in Noblesville.

58. The record does not indicate exactly how long the format was carried but once it became apparent that Mr. Osewalt would not be able to purchase WYIC, the format returned to the big band recordings. BCI urges that the sale was canceled on December 18, 1985 and that the format continued after that time which shows that WYIC's format change was within BCI's control. The record does not establish with any exactness when the format ended or when the sale was no longer possible. Thomas Lofton, who is both a BCI owner and its counsel, urges that his notes reflect that the transaction ended on December 18, 1985. To read Mr. Lofton's notes as he suggests would require considerable leeway in interpretation since they do not say that the sale was off. Mr. Lofton's view of his notes is self-serving and cannot be verified. The notes could just as easily be read to indicate that Mr. Lofton was working on the sale of WYIC to Osewalt on December 18, 1985. Mr. Lofton's response about any other matter that would have helped to determine what happened was that he could not remember. There is nothing in his notes that would have made his memory better and the notes do not provide objective evidence of when the transaction had come to an end. Mr. Cassidy, after all, stated that Mr. Mathis told him ten days after he signed the agreement to sell WYIC to Osewalt that he did not think there would be a sale because Mr. Osewalt would not be able to finance the sale. But despite that view, it is apparent from BCI's behavior that Mr. Osewalt's offer presented a wonderful, if not believable, opportunity to sell a station that had financial problems.

59. The Commission, in determining whether early and unauthorized control has taken place, looks at the buyer's influence over the station's finances, personnel matters, and programming. There is no evidence that WYIC benefited from BCI's format change to children's programming except through the $780,000 sale price. WYIC staff members claimed in filings made by BCI that the format was not profitable for the station. Nevertheless, while the transaction was alive, BCI carried CRN's programming and Mr. Osewalt hired people to sell time for the station. Other CRN affiliates, where there was no agreement to purchase, were treated differently. They did not receive equipment and they had compensation agreements. There is no evidence of any network affiliation agreement with BCI. CRN managers directed WYIC's staff and made decisions about how the station would program. There is no indication that WYIC had any right to overrule CRN directions, or that it tried to. There is no evidence that BCI benefited from carrying CRN's programs unless CRN principal owner, William Osewalt, paid BCI $780,000 for the station. BCI has not pointed to any benefit other than the sale that it received for allowing CRN to become intimately involved in its operation of WYIC.

60. BCI points to a number of cases where some control was exercised by potential purchasers or programmers where the Commission did not find that the control exercised was in violation of the Communications Act. The most recent incident cited is a letter from the Chief, Mass Media Bureau to Roy R. Russo about a client of Mr. Russo's who entered into a reciprocal time broker agreement. *Letter to Roy R. Russo*, 5 FCC Rcd 7586 (MMB 1990). In addition to the brokerage agreement there was a contract to purchase the station by the broker. In the case of Mr. Russo's client, there was an agreement which provided for compensation outside the sales agreement for the station in exchange for carrying the programs and the broker's authority was specifically limited by written agreement. BCI had no agreement about control, received no compensation, and the most reliable testimony indicates that CRN directed WYIC's staff on a daily basis and sold time with employees the purchaser hired. While BCI maintained its nonentertainment programming, it did so not of choice, but because it had existing contractual agreements to fulfill. The public affairs program which could be changed to agree with CRN's programming was changed. BCI's actions exhibit a willingness to turn the programming of its station over to a buyer who had offered an extraordinary price to purchase the station.

61. BCI argues that CRN did not hire staff at WYIC, did not supervise the general manager, and did not advance money. The record does not reflect whether any staff members were hired or fired by BCI during the three or four months CRN's format was carried. The existing staff was directed by CRN's program director on how to use the format and the new sales people were directly supervised at CRN's studio by CRN and paid by CRN. Whether CRN supervised Mr. Mathis, the general manager, is not indicated by the record. Mr. Mathis was an owner and he agreed to the CRN scheme to program the station. While there is no evidence that CRN advanced money to BCI, the sale agreement indicated that it paid BCI $10,000. And, of course, it provided BCI with all of its entertainment programs. In addition, CRN provided BCI with equipment to program and people to sell time. Mr. Bushor testified that he believed that BCI billed the time CRN's people sold.

62. Mr. Osewalt intended to purchase stations to insure that his children's programming would have a distribution base. The notion of programming for preadolescent children was an essentially untried format. There is no indication that Mr. Mathis or anyone else believed that the children's format would be advantageous to WYIC without the $780,000 promised by Osewalt. There is no support for the contention that Mr. Cassidy or any of BCI's owners believed that revenues would increase and there is no evidence that they did. The statements of station personnel submitted by BCI indicate that there was no revenue advantage. There does not appear to have been any business benefit for BCI for CRN's involvement in WYIC's affairs except through the sale.

63. BCI's willingness to turn over WYIC without Commission approval in order to sell the station and BCI's failure to fully inform the Commission about Mr. Fernandez's interest in another licensee raise serious doubts that it can be relied on to follow regulatory requirements. In two instances BCI has ignored the Commission's require-

ments. Its failure to fully control the license when there was a prospect of sale is a serious abdication of licensee responsibility and violates the Communications Act. In this proceeding BCI has not demonstrated that it will be a reliable steward of the public interest. BCI has not demonstrated that it is qualified.

Weiss' September 19, 1990 Motion to Enlarge Against BCI

64. Weiss petitions to enlarge issues against BCI to determine whether Michael Browning, Herbert Simon and/or companies they control are real parties in interest in the BCI application and whether BCI misrepresented or lacked candor in failing to disclose their involvement. Weiss' motion was filed before the hearing but the pleading cycle was not completed until exhibits had been exchanged and witnesses designated for the hearing. Weiss states that the information supporting the motion was discovered during depositions held the week of August 20, 1990. The depositions were held two months after discovery was scheduled to begin. Weiss does not explain the delay in conducting discovery until just before the hearing. A timely petition to enlarge, of course, was due before the start of discovery on June 22, 1990 and before the prehearing was held on June 4, 1990. The facts on which Weiss relies could have been discovered many months before the filing of its petition. Because BCI has been found unqualified, resolving the issues proposed by Weiss against BCI would not alter the outcome of this hearing.

65. Weiss explains that Michael Browning, who has been intimately involved in the financial affairs of BCI, is also a principal in and director of Ennis Broadcasting Corp., the licensee of WENS, an FM station in the Indianapolis market. Weiss urges that his cross-interest presents a motive for BCI to conceal Browning's relationship with BCI.

66. Weiss relies on depositions and the minutes of BCI's shareholder meetings to support allegations of the following factual claims: In 1986, BCI was the licensee of two AM stations and owned a program production and syndication business. It was having financial difficulties. The amount owed was nearly three million dollars. At that time Mr. Browning had lent BCI $200,000 and Mr. Simon had lent BCI $300,000. The largest creditor was Indiana National Bank, which was owed $1.4 million. Mr. Browning, although he is not a stockholder, promised to lend BCI $300,000 more and Mr. Simon said that he too would lend a similar amount. Mr. Browning and Mr. Simon claim they made the loans to BCI out of friendship for James T. Morris, who is one of the founders of BCI and a 20% shareholder. (Under BCI's current scheme of ownership, which was arranged for this hearing, Mr. Morris has about 1% of the voting interests.)

67. After the 1986 loans were made, Mr. Browning attended a BCI directors meeting. At that meeting an employee of Mr. Browning's was elected assistant treasurer and assistant secretary. That employee or another employee of Mr. Browning's has attended all meetings of the directors or shareholders of BCI since 1987. BCI has counted on Browning for financial services: loans, bookkeeping, payment of bills, and analysis of the financial state of the company. During all but a few months of the years since 1987, a Browning employee has signed or co-signed all checks written by BCI. Mr. Browning has not charged BCI for these financial services. In addition, when BCI sold one of its AM stations to Boone Communications, Mr. Browning participated in the negotiations and he purchased a note from BCI that resulted from the sale. When BCI applied for this FM, Mr. Browning, who is a real estate developer, provided reasonable assurance for the antenna site. When he needed his land for another project, he located another site for BCI.

68. BCI explains that Mr. Browning and Mr. Simon's role in its affairs resulted solely from their friendship with Mr. Morris. In a statement submitted by Mr. DePoy, BCI maintains that they have not been involved in setting broadcast policy or operating WYIC, BCI's remaining AM station. Furthermore, BCI claims that Mr. Browning's participation in its affairs has been approved by BCI's board. BCI argues that it has not hidden Mr. Browning's involvement. It points out that all the loans are reflected in notes, the minutes of BCI have recorded his participation, and the Commission has been informed about his employee acting as an officer.

69. Weiss replies to BCI's opposition. It urges that it is not plausible that Mr. Browning would lend $300,000 to BCI and that he would have his friend, Mr. Simon, lend $300,000 to BCI simply out of his friendship with Mr. Morris. Mr. Morris, Weiss points out, owns less than 20% of BCI and only 1% of its voting power. Weiss asserts that Browning's control of BCI's finances is "more absolute and complete than any situation yet encountered by the Commission." Weiss claims that it is implausible that Mr. Browning would provide free accounting services and undertake locating an antenna site, simply out of friendship. Finally, Weiss asserts that BCI has not been completely forthcoming; it points to the deposition of Mr. Lofton. Mr. Lofton claimed he did not know Mr. Browning was involved in BCI and he also claimed he did not know whether his law firm represented Mr. Browning. Neither of Lofton's assertions are believable, Weiss maintains.

70. If BCI were a comparative contender in this proceeding, Mr. Browning's role would be of comparative importance and the issue would be designated. It does not appear, however, that BCI misrepresented or withheld information from public view or the Commission about Mr. Browning and Mr. Simon's interest. (Although, it may be that BCI has not accurately characterized their interest and their ability to control financial decisions of BCI. The evidence submitted by Weiss only raises speculation that their authority is greater than BCI admits.) BCI points out it produced the documents and answered questions about Browning's role in BCI affairs. While Mr. Lofton was not forthcoming, it has already been found that Mr. Lofton is not a reliable witness. That fact alone does not establish that overall BCI misrepresented Mr. Browning's or Mr. Simon's interest. The petition to enlarge will be denied.

Comparison of the qualified applicants

71. There are three qualified applicants for Noblesville Channel 230A: Bible, Weiss, and Umberger. Bible does not propose any integration of ownership and management. Weiss and Umberger propose integration into management of the person who controls the applicant. Mary Weiss owns all of the voting shares of Weiss and she will become the general manager. Umberger is the individual applicant Ben L. Umberger. Mr. Umberger will also be the general manager. Both Weiss and Umberger propose to work full time, 40 hours per week. On a quantitative

basis, Umberger and Weiss are equal. Qualitatively, Weiss is superior to Umberger. She lives in the service area while Umberger lives in Florida. Ms. Weiss has familiarized herself with the service area by participating in local civic activities; Umberger has not. Ms. Weiss also receives a preference because she is female. Mr. Umberger has promised to move to Noblesville and he has worked at broadcast stations since 1970. Ms. Weiss has worked at broadcast stations since 1979. Although Mr. Umberger has twenty years of broadcasting experience and Ms. Weiss has only eleven years, his greater broadcast experience does not outweigh her superiority on all other qualitative criteria. Weiss is the preferred applicant on integration of ownership into management.

72. Bible holds many broadcast licenses. Weiss has no mass media interests. Umberger failed to submit any evidence that he does not have mass media interests. Based on these showings Weiss is preferred on diversification over Bible and Umberger. Bible and Umberger have not proposed auxiliary power but Weiss has proposed emergency power generation equipment. Weiss is preferred over Bible and Umberger for her auxiliary power proposal.

73. BCI has been found to be unqualified to become a licensee of this facility because of its deliberate failure to report the media interest of Julio Fernandez and its premature transfer of control to a potential purchaser of its AM facility, WYIC. BCI, it is concluded, would not be a licensee the Commission could rely on to follow regulatory requirements. Weiss is comparatively superior to Bible and Umberger. Weiss' proposal is superior to Bible on the basis of all comparative criteria. Its proposal is superior to Umberger on qualitative integration of ownership into day-to-day management, diversification of the ownership of the mass media, and its proposal for auxiliary power. The public interest would be best served by a grant of Weiss' application.

ACCORDINGLY, IT IS ORDERED that the petition for leave to amend and amendment, filed May 3, 1991 by Bible Broadcasting Network, Inc. IS GRANTED and the amendment IS ACCEPTED.

IT IS FURTHER ORDERED that the petition for leave to amend, filed May 17, 1991 by Weiss Broadcasting of Noblesville, Inc. IS GRANTED and the amendment IS ACCEPTED.

IT IS FURTHER ORDERED that the motion to enlarge issues against Broadcast Communications, Inc., filed September 19, 1990 by Weiss Broadcasting of Noblesville, Inc. IS DENIED.

IT IS FURTHER ORDERED that the applications of Bible Broadcasting Network, Inc. (File No. BPED-880301ML), Broadcast Communications, Inc. (File No. BPH-880301MZ) and Ben L. Umberger (File No. BPH-880301PD) ARE DENIED and the application of Weiss Broadcasting of Noblesville, Inc. (File No. BPH-880301MQ) for a construction permit for a new commercial FM station on Channel 230A at Noblesville, Indiana IS GRANTED.[2]

FEDERAL COMMUNICATIONS COMMISSION

Edward J. Kuhlmann
Administrative Law Judge

FOOTNOTES

[1] It is not at all evident that Mr. Fernandez's actual day-to-day role is not attributable. He is one of a few officers in a multiple licensee that has no other business except communications. Mr. Fernandez produces programs and distributes them to broadcast stations. On occasion he is even consulted about programs to be broadcast on Wabash Valley stations. He is part of the management of Wabash Valley and he meets with the other managers to discuss budgetary matters and programming decisions.

[2] In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision will become effective 50 days after its public release pursuant to Sec. 1.276(d).

Before the
Federal Communication Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: June 10, 1991

NEW YORK TELEPHONE COMPANY FILES PETITION FOR WAIVER OF PART 61 OF THE COMMISSION'S RULES REGARDING COLLOCATION PREMISES SERVICE

Pleading Cycle Established

On May 15, 1991, the New York Telephone Company (NYT) filed a petition for waiver of Section 61.49(g) of the Commission's Rules to enable NYT to file a tariff establishing a new Collocation Premises service. The service would permit customers to establish collocated premises in NYT's central offices subject to certain conditions.

NYT states that the terms and conditions under which customers will be allowed to establish collocated premises and the rates for interconnection between NYT intrastate services and the facilities of collocated customers are contained in NYT's state tariff. According to NYT, alternative local transport providers (ALTs) have requested collocated interconnection to both state and interstate services of NYT. NYT proposes to satisfy their requests by offering a collocation option for connection to interstate access services that would be comparable to the state collocated interconnection tariff filing. The new service would enable customers to establish premises within a central office and would provide reduced rates for interconnection between those premises and NYT's interstate services in the central office. For Special Access services, NYT would file a reduced Channel Termination rate, called the Office Channel Termination (OCT), that would be charged to customers, establishing collocated premises pursuant to the tariff.

In filing a tariff for a new service under the price cap rules, NYT is required to meet the net revenue test under Section 61.49(g) of the Commission's Rules. The net revenue test requires that NYT show that the incremental revenues from the OCT would exceed the incremental costs. According to the NYT petition, NYT's proposal to price the OCT at a substantial discount from the existing Channel Termination rate to reflect the lower costs of collocated interconnection would cause the service to fail the net revenue test because many purchasers of the service would migrate from NYT's Special Access services currently priced at the full Channel Termination rate.

Interested parties should file comments regarding the NYT petition no later than August 9, 1991. Reply comments should be filed no later than September 9, 1991.

An original and four copies of all comments and replies must be filed with the Secretary of the Commission in accordance with Section 1.51(c) of the Commission's Rules. Parties must also furnish one copy of their comments and replies to the Downtown Copy Center (DCC), the Commission's duplicating contractor, at its office in Room 246, 1919 M Street, N.W., Washington, D.C. 20554, and one copy to the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

Copies of NYT's waiver petition, along with other related documents, may be obtained from DCC. The documents are also available for public inspection and copying in Room 518, 1919 M Street, N.W.

For further information, contact Terry S. Conway, Tariff Division, Common Carrier Bureau at (202) 632-6917.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-536

In the Matter of

Amendment of Section 73.202(b),	RM-7528
Table of Allotments,	RM-7555
FM Broadcast Stations.	RM-7629
(Claxton, Waynesboro, Georgia)	
and Bluffton, South Carolina) [1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 6, 1991; Released: June 17, 1991

By the Chief, Allocations Branch:

1. At the request of Evans Broadcasting Company, Inc. ("Evans"), licensee of Station WCLA(FM), Channel 296A, Claxton, Georgia, the Commission has before it the *Notice of Proposed Rule Making*, 5 FCC Rcd 6651 (1990), proposing the substitution of Channel 297C3 for Channel 296A at Claxton, and the modification of its license for Station WCLA(FM) to specify Channel 297C3. Clifford Jones ("Jones"), permittee of Station WAGW(FM), Channel 296A, Waynesboro, Georgia, filed a petition proposing the substitution of Channel 296C3 for Channel 296A at Waynesboro, Georgia, and modification of the construction permit for Station WAGW(FM) to specify Channel 296C3. We have treated that petition as a counterproposal in this proceeding. DHA Broadcasting, Inc. ("DHA"), licensee of Station WLOW(FM), Bluffton, South Carolina, Channel 295C2, filed a counterproposal seeking to substitute Channel 295C1 for Channel 295C2 at Bluffton, South Carolina, and modification of its license to specify Channel 295C1. [2] Evans filed comments restating its intention to apply for Channel 297C3, if allotted. DHA, Evans and Jones filed reply comments. DHA filed comments in response to the counterproposals.

2. Jones in his counterproposal states that Stations WAGW(FM) and WCLA(FM) are grandfathered short-spaced Class A FM stations, and cannot increase their power to 6 kilowatts. Jones states that the substitution of Channel 297C3 for Channel 296A at Claxton will allow Station WAGW(FM) at Waynesboro to upgrade to a Class C3 facility. Jones states his intention to apply for Channel 296C3, if allotted to Waynesboro.

3. DHA notes that its proposal to substitute Channel 295C1 for Channel 295C2 at Bluffton, South Carolina, is mutually exclusive with Evans' and Jones' proposals. DHA also states that the substitution of Channel 297A for Channel 296A at Claxton would permit Station WCLA(FM) to increase to 6 kilowatts at its presently authorized transmitter site, with a 48 percent increase in service area. DHA states that if Channel 297A is substituted for Channel 296A at Claxton, it will reimburse Evans for reasonable expenses in changing the frequency of Station WCLA(FM). [3] Finally, DHA states its intention to apply for Channel 295C1, if allotted.

4. Evans, in its reply comments, suggests that Channel 295C1 could be allotted to Bluffton at coordinates 32-09-39 and 80-45-49. Evans claims that this would permit the Commission to accommodate the requests of DHA, Evans and Jones.

5. Jones in his reply comments argues that Channel 295C1 can be allotted to Bluffton with a site restriction of about 10 kilometers south of the community. Jones contends that DHA could not upgrade Station WLOW(FM) to operate on Channel 295C1 from its present site because such operation would be short-spaced to the transmitter site of Station WRLX(FM), Channel 294C1, Orangeburg, South Carolina, and therefore DHA would be required to change transmitter sites to operate on Channel 295C1 even if the competing proposals had not been filed. Jones states that there exists a large area in which a site from which operation of Station WLOW(FM) on Channel 295C1 would be fully compatible with the proposals of Jones and Evans.

6. DHA in its reply comments states that if it were to move its transmitter to coordinates 32-09-14 and 80-58-24, all three stations could obtain upgrades. DHA goes on to state that since this solution requires no change other than what each party sought, no reimbursement of expenses should be involved.

7. An engineering analysis has determined that Channel 297C3 can be allotted to Claxton, Georgia, in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.4 kilometers (0.8 miles) northwest, [4] at Evans' requested site, in order to avoid short-spacings to Station WCRJ(FM), Channel 297C1, Jacksonville, Florida, and Station WKQB(FM), Channel 298C, St. George, South Carolina. Channel 296C3 can be allotted to Waynesboro, Georgia, in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.9 kilometers (11.7 miles) northeast, at Jones' requested site, in order to avoid a short spacing to Station WLOW(FM), Channel 295C1, Bluffton, South Carolina. [5] Channel 295C1 can be allotted to Bluffton, South Carolina, in compliance with the Commission's minimum distance separation requirements with a site restriction of 14 kilometers (8.7 miles) southwest, [6] at the site specified in DHA's reply comments, in order to avoid a short-spacing to Station WAGW(FM), Channel 296C3, Waynesboro, Georgia.

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[1] The communities of Waynesboro, Georgia, and Bluffton, South Carolina, have been added to the caption.

[2] Public Notice of the counterproposals was given on February 15, 1991, Report No. 1838 (RM-7555 and RM-7629).

[3] The resolution of this proceeding removes any necessity for reimbursement.

[4] The coordinates for Channel 297C3 at Claxton are North Latitude 32-10-20 and West Longitude 81-55-09.

[5] The coordinates for Channel 296C3 at Waynesboro are North Latitude 33-12-56 and West Longitude 81-52-39.

[6] The coordinates for Channel 295C1 at Bluffton are North Latitude 32-09-14 and West Longitude 80-58-24.

8. In view of the above information, we believe that the public interest would be served by the substitution of Channel 297C3 for Channel 296A at Claxton, Georgia, the substitution of Channel 296C3 for Channel 296A at Waynesboro, Georgia, and the substitution Channel 295C1 for Channel 295C2 at Bluffton, South Carolina. In accordance with Section 1.420(g) of the Commission's Rules, we will modify the license for Station WCLA(FM), Claxton, Georgia, to specify operation on Channel 297C3 in lieu of Channel 296A, the construction permit for Station WAGW(FM) to specify Channel 296C3 in lieu of Channel 296A at Waynesboro, Georgia, and the license for Station WLOW(FM) to specify Channel 295C1 in lieu of Channel 295C2 at Bluffton, South Carolina.

9. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 1, 1991,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

City	Channel No.
Claxton, Georgia	297C3
Waynesboro, Georgia	265A, 296C3
Bluffton, South Carolina	295C1

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WCLA(FM), Claxton, Georgia, IS MODIFIED, to specify operation on Channel 297C3 in lieu of Channel 296A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit (BPH-890427MI) of Station WAGW(FM), Waynesboro, Georgia, IS MODIFIED, to specify operation on Channel 296C3 in lieu of Channel 296A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WLOW(FM), Bluffton, South Carolina, IS MODIFIED, to specify operation on Channel 295C1 in lieu Channel 295C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

National Exchange
Carrier Association, Inc.

Proposed Revisions to the
Interstate Average Schedules

MEMORANDUM OPINION AND ORDER

Adopted: June 10, 1991; Released: June 12, 1991

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. This order directs the National Exchange Carrier Association, Inc. (NECA) to modify the average schedule formulas that it filed on December 31, 1990. NECA is required to file those modifications to the average schedule formulas not later than June 20, 1991.

II. BACKGROUND

2. Section 69.606(b) of the Commission's rules requires the NECA Board of Directors to propose annual revisions to the average schedules or certify that no revisions are warranted. [1] Section 69.606(a) states that no disbursements shall be made to average schedule companies by NECA without Commission approval. [2] On December 31, 1990, NECA filed proposed revisions[3] to average schedules that had previously been approved and become effective July 1, 1990. [4] NECA requested that these revisions become effective July 1, 1991.

3. On January 29, 1991, the Bureau rejected a NECA tariff that reflected an allocation of more than five percent of Other Billing and Collection expenses (OB&C) to the common line element. [5] On March 22, 1991, NECA proposed further modifications to the average schedules to comply with the five percent OB&C limitation. In addition, NECA proposed modifications that it contends are necessary to reflect a recent Internal Revenue Service interpretation of section 501(c)(12) of the Internal Revenue Code. [6] NECA's proposed adjustments did not separate the effects of tax adjustments and the OB&C adjustments. [7]

III. NECA's DECEMBER 31, 1990 PROPOSED REVISIONS

4. *Comments.* With the exception of MCI, all commenting parties urge that NECA's proposed modifications be approved. [8] MCI contends that NECA's proposal is inadequate because NECA did not include a mechanism to ensure that average schedule companies are not "overearning" on a total company (*i.e.*, intrastate and interstate) basis. [9] MCI asserts that many states determine intrastate access rates by "residual ratemaking" --deducting interstate average schedule settlements from total company revenue requirements. MCI suggests that it would be possible to determine whether average schedule companies were over-earning by deducting authorized intrastate revenue requirements from total company revenue requirements and comparing that difference with interstate average schedule settlements. [10] MCI states that a mechanism should be incorporated in the average schedules to prevent average schedule companies from "overearning."[11]

5. NECA states that implementation of MCI's proposal would require changing Section 69.606(a) of the Commission's rules, and ICORE states that MCI's proposal is outside the scope of this proceeding. NECA also contends that MCI's proposal is unworkable because some states set intrastate rates by residual ratemaking, and many states do not require intrastate cost studies. [12] NTCA argues that MCI's recommendation is illogical and impractical. NTCA states that if the intrastate revenue requirement has been determined by subtracting interstate average schedule settlements from a total company revenue requirement, and one subtracts intrastate revenues from total company revenue requirements, a company's interstate revenue requirement will always equal its interstate average schedule settlements. NTCA states that such an effort would not lead to any useful result. In addition, NTCA states that it would be difficult to implement such a proposal because cost recovery mechanisms vary from state to state, preventing any useful comparison of residual interstate earnings among average schedule companies. [13]

6. *Discussion.* MCI's proposal is not consistent with current rules, and would require a major change in the development of the average schedules. Moreover, it is far from clear that MCI's proposal would yield any benefits.

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[1] 47 C.F.R. § 69.606(b)(1990).
[2] 47 C.F.R. § 69.606(a)(1990).
[3] On January 22, 1991, NECA filed errata to its December 31, 1990 proposal. In this Memorandum Opinion and Order, references to NECA's December filing include the changes made by NECA in its January filing.
[4] *See generally* In the Matter of NECA's Proposed Revisions to the Average Schedules, 5 FCC Rcd 4068 (1990).
[5] National Exchange Carrier Association, Inc. Revisions of Tariff F.C.C. No. 5, Transmittal No. 425, Order, DA 91-116, 6 FCC Rcd 719 (*OB&C Order).*
[6] *See* Internal Revenue Service, National Office Technical Advice Memorandum, Index Numbers 0501.12-02 and 0513.00-00 (Mar. 15, 1991).
[7] NECA corrected its March 22, 1991 filing in a filing made on March 27, 1991
[8] Comments were filed by ICORE, Inc., MCI Communications Corporation (MCI), National Telephone Cooperative Association (NTCA), Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO), United States Telephone Association (USTA), and the Winnebago Cooperative Telephone Association. Reply comments were filed by ICORE, NECA, and NTCA.
[9] MCI Comments (Mar. 1, 1991) at 2.
[10] *Id.* at 2-3.
[11] *Id.* MCI's suggestion is described in broad terms without an explanation of how such an approach might be implemented.
[12] NECA Reply (Mar. 14, 1991) at 13 n. 40.
[13] NTCA Reply (Mar. 14, 1991) at 4-6.

As NTCA and NECA note, in the case of states that employ residual ratemaking, the mechanism proposed by MCI would not yield any useful or new information because of its circularity. States that do not use residual ratemaking employ a variety of ratemaking methods and use test periods that are not coincident with each other or with the periods that interstate average schedules are in effect. These factors would tend to frustrate any effort, at the national level, to develop a mechanism that would be applicable to *all* average schedule companies, irrespective of the states in which those companies operate. Accordingly, we decline to require NECA to modify the average schedule formulas in the manner that MCI has requested.

IV. NECA's OB&C AND TAX REVISIONS

7. *Background.* As noted above, after NECA filed proposed revisions on December 31, 1990, the Bureau released an order rejecting a NECA tariff that allocated more than five percent of OB&C expenses to the common line element. On March 22, 1991 and March 27, 1991, NECA filed additional revisions to reflect that decision. [14] NECA's March 1991 filings also addressed increased revenue requirements that it alleged would result from a Technical Advisory Memorandum (TAM), [15] issued by the Internal Revenue Service on March 15, 1991. According to NECA, the OB&C adjustment resulted in a decrease in the common line formula of 4.3%,[16] and the income tax adjustments resulted in respective increases to the common line and traffic sensitive formulas of 1.1% and 0.7%.

8. *Comments.* NTCA argues for approval of the modifications that were designed to reflect the tax changes. However, NTCA contends that the reductions in average schedule formulas reflecting the *OB&C Order* should be rejected because that order was based upon an incorrect construction of the Commission's rules. MCI, on the other hand, states that the OB&C reductions should be retained and that the increase resulting from NECA's income tax adjustments should be rejected because NECA has not supplied the data or calculations that would permit verification of the accuracy of NECA's adjustments. MCI states that NECA should be required to place in the record the amount and classification, as described in the Internal Revenue Code, of each revenue account of each cooperative telephone company. MCI contends that without such a showing it is impossible for the Commission to determine whether the proposed increases in the average schedule formulas are just and reasonable, and whether NECA has properly followed the Internal Revenue Code in calculating the potential tax liability for telephone cooperatives. [17] MCI further contends that NECA should be required to explain the reason it believes each telephone cooperative has lost its federal tax exemption, as the Internal Revenue Code has not changed.

9. NECA and NTCA respond that the Internal Revenue Code has not changed, but that the Internal Revenue Service's recent interpretation of the Code necessitates an increase in revenue requirements. NECA states that its data base does not contain the types of information that MCI contends that it should provide, but also states that it has modified its data collection activities to permit it to provide that information in its 1992 filing. NECA asserts that it is reasonable to assume that virtually all cooperatives (other than those in North Carolina, which are municipalities) will lose their tax exempt status. Finally, NECA asserts that its March 22, 1991 filing fully explains the basis for the modifications that it proposed to its earlier average schedule filings.

10. *Discussion.* We are not persuaded by NCTA's argument that the average schedules should not be adjusted downward to comply with the Bureau's *OB&C Order* because that *Order* was based upon an incorrect interpretation of the Commission's rules. NECA has filed a petition concerning the Bureau's interpretation. [18] However, unless and until the treatment of OB&C expenses is modified by the Commission, the *OB&C Order* circumscribes the treatment of OB&C expenses for cost companies. Section 69.606(a) requires that disbursements to average schedule companies simulate cost company disbursements. Therefore, NECA was required to modify the average schedule formulas that it filed on December 31, 1990 to reflect the limitation on OB&C expenses described in the *OB&C Order*.

11. Although the Internal Revenue Service TAM apparently will result in some increase in revenue requirements that was not reflected in the proposed schedules NECA filed in December 1990, NECA has not been able to provide sufficient information about the effects of the TAM to enable us to approve any tax expense adjustment at this time. We do not believe it is reasonable to assume that virtually all of the cooperatives will be affected without concrete information about the relevant revenues of the cooperatives. Moreover, NECA has not provided enough information to enable us to verify the accuracy of NECA's computation of the additional tax expense that would result if the TAM does affect virtually all cooperatives that provide telephone service.

12. In light of these circumstances, we have decided to modify the proposed 1991-92 schedules to include an OB&C adjustment and to exclude the tax adjustment. We will, however, permit NECA to submit a modified plan for the balance of the 1991-92 period for approval as soon as NECA obtains the necessary information to compute a

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[14] Letters from Richard A. Askoff, NECA Attorney, to Donna Searcy, FCC Secretary (Mar. 22 and Mar. 27, 1991).

[15] Internal Revenue Service, National Office Technical Advice Memorandum, Index Numbers 0501.12-02 and 0513.00-00.

[16] NECA Amendment (Mar. 22, 1991) at 4; NECA Correction (Mar. 27, 1991) at 6.

[17] MCI Comments (Apr. 18, 1991) at 2-3. Section 501(c)(12)(A) of the Internal Revenue Code requires that co-operative telephone companies receive at least 85% of their revenues from members ("member source income") to retain tax exempt status. The TAM concluded: (i) that billing and collection revenues constitute income from an unrelated trade or business and are, therefore, "non-member source income"; (ii) that end user revenues (including subscriber line charges, message tolls, and wide area toll services) are "member source" income; and (iii) that carrier's carrier facilities revenues, and interstate and intrastate access revenues are to be excluded from the 85% member source income test. TAM at 23-24. MCI thus concludes that without detailed revenue accounting information, it is impossible to ascertain the tax status of each cooperative telephone company. MCI Comments (Apr. 18, 1991) at 3.

[18] Pleading Cycle Established For Comments On NECA's Petition For Declaratory Ruling Concerning Interstate Common Line Allocation Of Other Billing and Collecting Expense, DA 91-309, 6 FCC Rcd 1596 (1991).

as NECA obtains the necessary information to compute a tax expense adjustment and presents information that will enable us to verify the accuracy of the proposed adjustment.

13. NECA did not describe the computation of the OB&C and tax expense adjustments with sufficient detail to enable us to prescribe the precise adjustments that will implement our decision. We will, therefore, require NECA to submit a modified plan with an explanation of the OB&C adjustment that will enable us to verify the accuracy of the computations on or before June 20, 1991.

14. Any interested persons who wish to comment on the NECA computation may file comments on or before June 24, 1991.

V. OTHERS MATTERS

15. Although ICORE argued for approval of NECA's December 31, 1990 revisions to the average schedules, ICORE recommends two "administrative" modifications that could be made when NECA's average schedule formulas become effective July 1, 1991. First, ICORE suggests that NECA make provision for directly reimbursing average schedule companies for their costs of accessing Signaling System 7 (SS7) data bases. Second, ICORE recommends that average schedule companies be permitted to retain Primary Interexchange Carrier (PIC) change charges as a device for allowing average schedule companies to recover more of their ongoing equal access costs.[19]

16. NECA opposes ICORE's suggestions. First, NECA states that providing dollar-for-dollar compensation for accessing SS7 data bases appears to be premature since no company has claimed settlements for SS7 investment costs, and there is still some uncertainty as to how small telephone companies will obtain access to large company databases, as well as how they will be charged for such access. NECA states that as the necessary information becomes available, it will act expeditiously to develop formula modifications to reflect these costs of accessing SS7 data bases. NECA also states that a "bill-and-keep" mechanism for PIC change charges appears to be inconsistent with basic concepts underlying both average schedules and equal access cost recovery principles. [20]

17. We agree with NECA's assessment that direct reimbursement of the costs of accessing SS7 data bases would be premature. With regard to ongoing equal access costs, ICORE acknowledges that the average schedules do reflect these costs, although with a time lag. The average schedules will fully reflect equal access costs, and NECA has been working on alternative approaches to address any problems caused by the time lag. We therefore see no reason to approve the retention of PIC charges, especially given that those charges bear no direct relationship to each company's ongoing equal access costs. We therefore decline to require NECA to implement the "administrative" suggestions made by ICORE.

18. ICORE also suggests that several modifications be included in future average schedule revisions. ICORE seeks: (1) inclusion of cost company financial data in the average schedule development process; (2) further study of special access settlements; (3) restructuring of the minute-driven element of the CABS/Access Administrative Expenses formula; (4) direct reimbursement of ongoing equal access costs; and (5) retention of separate formulas for CABS/Access Administrative Expenses, SS7, and equal access. [21] NECA and NTCA state that ICORE's proposals have been under study for some time, and note some of the difficulties that ICORE's proposals have presented as NECA has attempted to develop accurate formulas that comply with Section 69.606(a) of the Commission's rules.[22] NECA states that it will continue to study ICORE's suggestions, and will incorporate them in future revisions, if appropriate. After considering ICORE's suggestions, in the light of NECA's and NTCA's responses, we see no need for action on our part at this time.

VI. ORDERING CLAUSES

19. ACCORDINGLY IT IS ORDERED, pursuant to the authority that is contained in Sections 0.291 and 69.606(a) of the Rules and Regulations of the Federal Communications Commission, that NECA SHALL MODIFY the average schedule formulas as provided herein AND FILE those formulas and supporting documentation with the Secretary of the Federal Communications Commission and serve a copy on each party to this proceeding, not later than June 20, 1991;

20. IT IS FURTHER ORDERED that COMMENTS on the revisions to the average schedule formulas required herein SHALL BE FILED on or before June 24, 1991.

21. IT IS FURTHER ORDERED that if NECA requests an increased revenue requirement to reflect the IRS technical advisory memorandum for cooperative telephone companies discussed herein, NECA SHALL INCLUDE with its request the amount and classification of each account of each cooperative telephone company that is relevant to a determination of the tax exempt status, and calculation of the income tax liability, of each of the cooperative telephone companies that will receive average schedule settlements pursuant to its request.

22. IT IS FURTHER ORDERED that the recommendations and suggestions of the parties to this proceeding ARE GRANTED to the extent stated herein and ARE OTHERWISE DENIED;

23. To facilitate the prompt disbursement of accurate compensation to average schedule companies, IT IS FURTHER ORDERED that this Memorandum Opinion and Order IS EFFECTIVE upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

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[19] ICORE Comments (Mar. 1, 1991) at 13-14.
[20] NECA Reply (Mar. 14, 1991) at 9-10.
[21] ICORE Comments (Mar. 1, 1991) at 4, 7-18; ICORE Reply (Mar. 14, 1991) at 3, 5.
[22] NECA Reply (Mar. 14, 1991) at i-ii, 6-9, 11-12, 14; NTCA Reply (Mar. 14, 1991) at 2-4.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: June 12, 1991

COMMENTS INVITED ON KANSAS PUBLIC SAFETY PLAN

The Commission has received the public safety radio communications plan for Kansas (Region 16). In accordance with the Commission's Report and Order in Genderal Docket No. 87-112 implementing the Public Safety National Plan, parties may file comments on or before **July 19, 1991** and reply comments on or before **August 5, 1991**. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket No. 87-112, Region 16 consists of the State of Kansas. (See Memorandum Opinion and Order, General Docket No. 87-112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to **PR Docket 91-162 Kansas - Region 16**, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, D.C. 20554.

Questions regarding this public notice may be directed to Betty Woolford Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8112.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

ET Docket No. 91-150

In the Matter of

Amendment of Part 15 to Provide Additional Frequencies for Auditory Assistance Devices for the Hearing Impaired — RM-7251

NOTICE OF PROPOSED RULE MAKING

Adopted: May 24, 1991; Released: June 18, 1991

Comment Date: September 9, 1991
Reply Comment Date: October 9, 1991

By the Commission:

INTRODUCTION

1. By this action, the Commission proposes to amend Part 15 of its rules by expanding the bands in which auditory assistance devices are permitted to operate. The objectives of this proposal are to improve the ability of educational institutions to meet the needs of hearing impaired students and to promote more effective use of the radio spectrum. This proposal addresses a petition for rule making before the Commission filed by Phonic Ear, Inc. ("Phonic Ear"), on December 12, 1989.

BACKGROUND

2. Auditory assistance devices operate on a non-licensed basis under Part 15 of the Commission's rules. An auditory assistance device is defined in Section 15.3(a) as an intentional radiator used to provide auditory assistance to a handicapped person or persons. [1] Such devices are typically used for auricular training in an educational institution, for auditory assistance at places of public gatherings, and for auditory assistance to handicapped individuals in other locations. Auditory assistance devices currently operate in the frequency bands 72-73 MHz and 75.4-76 MHz. These frequency bands are allocated to the fixed and mobile services and are available for use under the Domestic Public Land Mobile Service (Part 22), the Private Land Mobile Service (Part 90), and the Personal Radio Service (Part 95). Under the Part 15 conditions for operation, auditory assistance devices may not cause harmful interference to these services and must accept any interference received.

3. In its petition, Phonic Ear states that auditory assistance devices have been experiencing increasing amounts of interference due to growth in use of the 72-73 MHz and 75.4-76 MHz bands by the land mobile services. These services transmit signals at much higher levels than are permitted for auditory assistance devices under Part 15.[2] In particular, according to Phonic Ear, messages transmitted by paging systems often interrupt and override the voice of a teacher as heard by a hearing-impaired student using an auditory assistance device. Phonic Ear states that while the usual remedy is to shift operation of the auditory assistance device to frequencies not used locally by land mobile services, this option is becoming increasingly unavailable. The number of usable frequencies is so severely limited by interference that, as a result, Phonic Ear indicates that some large educational institutions are now unable to operate enough auditory assistance devices to cover all of their classrooms. Phonic Ear states that this severely impedes the ability of these institutions to educate hearing impaired students. In order to correct this situation, Phonic Ear proposes that the frequency bands which auditory assistance devices are permitted to use be expanded to include the 74.6-74.8 MHz and 75.2-75.4 MHz bands. This spectrum became available for fixed and mobile services after the two guardbands protecting aeronautical marker beacons at 75.0 MHz were narrowed from 400 kHz to 200 kHz on January 1, 1990. [3] Phonic Ear states that auditory assistance devices would not experience significant interference on these frequencies because there is no existing use and any potential new services must be limited to operation below one watt in accordance with Footnote US 273 to the Table of Frequency Allocations. [4]

4. Williams Sound Corporation filed comments in support of Phonic Ear's position. The Manufacturer's Radio Frequency Advisory Committee ("MRFAC") filed comments opposing Phonic Ear's petition. It points out that MRFAC has filed a separate petition for rule making requesting that the 74.6-74.8 MHz and 75.2-75.4 MHz bands be allocated to the Manufacturers Radio Service ("MRS") under Part 90 of the Commission's rules. [5] MRFAC wishes to use these frequencies for remote control of industrial equipment. MRFAC argues that unlicensed devices, such as those used for auditory assistance purposes, operating in these bands would be difficult to locate and shut down should they cause harmful interference. MRFAC, therefore, believes that Phonic Ear's petition should be denied in order to prevent possible interference to remote control signals in manufacturing plants in the event that MRFAC's petition is granted.

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[1] *See* 47 CFR Section 15.3(a).

[2] For example, the maximum transmitter output power for land mobile stations is 150 watts under Part 22 and 350 watts under Part 90. *See* 47 CFR Sections 22.501(f) and 90.205(b), respectively.

[3] Footnote 572 to the international Table of Frequency Allocations permits the use of the bands 74.6-74.8 MHz and 75.2-75.4 MHz after December 31, 1989 for fixed and mobile services, except aeronautical mobile. Improved receiver technology has decreased the width of the guardbands necessary to protect aeronautical marker beacons at 75 MHz from harmful interference. *See* 47 CFR Section 2.106.

[4] *See* Footnote US 273 to the Table of Frequency Allocations, 47 CFR Section 2.106.

[5] *See* RM-7182 filed November 3, 1989.

DISCUSSION

5. Auditory assistance devices have long been recognized as playing a vital role in educating the hearing impaired. Further, these devices enable the hearing impaired to enjoy the theater, church services, and other functions available to the rest of the population. Based on the arguments presented in Phonic Ear's petition and the comments filed in response to that petition, it appears that auditory assistance devices are indeed experiencing significant interference problems in the bands in which they are currently permitted to operate. We believe the public interest would be served by making additional frequencies available to remedy the interference problem.

6. The frequency bands 74.6-74.8 MHz and 75.2-75.4 MHz appear to be ideally suited as additional spectrum for auditory assistance devices. These frequencies would enable use of existing equipment designs because of the close proximity to the currently available frequencies. Therefore, we expect there would be little or no increase in the cost of the equipment, which is often a matter of particular concern to the handicapped. Perhaps most important, auditory assistance devices are far less likely to experience interference on these frequencies. These frequencies are currently vacant. Moreover, any services that may be ultimately authorized to use these frequencies will be required to limit the transmitter output power to no more than one watt as specified in Footnote US 273 to the Table of Frequency Allocations. Thus, auditory assistance devices will not be exposed to the type of high power signals existing in the frequency bands currently being used. They will have to compete only with licensed services which have less than one watt of transmitter power, and other Part 15 devices which comply with the general radiated emission limits in Section 15.209. [6] It is important to note that the removal of the 74.6-74.8 MHz and 75.2-75.4 MHz spectrum from the restricted table in Section 15.205 will permit any Part 15 device which complies with the general radiated emission limits in Section 15.209 to operate within these bands, along with auditory assistance devices. However, since the general emission limits of Section 15.209 are considerably lower than the emission limits provided for auditory assistance devices, it is not expected that other Part 15 devices operating under this section will present any greater potential for interference.

7. We note that the Commission has made no finding on the merits of MRFAC's petition for use of the 74.6-74.8 MHz and 75.2-75.4 MHz bands by the Manufacturer's Radio Service. In any event, if we were to act favorably on MRFAC's petition we believe there would be little risk of interference from auditory training devices. The 72-73 MHz and 75.4-76 MHz bands, which auditory assistance devices have been using for nearly 20 years, are also used by the Manufacturer's Radio Service for fixed operations limited to the confines of manufacturing areas, and mobile operations limited to an output power of one watt. [7] We are unaware of any harmful interference that has been caused to the Manufacturer's Radio Service by auditory assistance devices. This could be attributed to the very low signal levels permitted for auditory assistance devices and to the fact that auditory assistance devices are used at locations such as schools, churches, and auditoriums that are generally separated from manufacturing facilities by substantial distances. Even if harmful interference were to occur, it would be fairly easy to identify and locate auditory assistance devices as the source of interference because such operations tend to be continuous and are at fixed locations. Furthermore, if harmful interference were to occur to a licensed service, the operation of the auditory assistance device would be required to cease until the interference was corrected.

8. In light of these considerations, we are proposing to amend Part 15 of the rules to allow auditory assistance devices to be operated in the 74.6-74.8 MHz and 75.2-75.4 MHz bands. The administrative and technical requirements for operation in these bands are proposed to be identical to those for the existing auditory assistance devices. The specific proposed rule amendments are shown in the Appendix. We invite comments regarding this proposal.

PROCEDURAL MATTERS

9. *Initial Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission's initial analysis is as follows:

I. Reason for Action: Auditory assistance devices operating in the bands available to them under Part 15 of the FCC Rules appear to be experiencing a significant amount of interference from common carrier and private radio systems. In some cases, this interference renders the auditory assistance devices unusable.

II. Objective: The objective of the proposed rules is to improve the quality of life for hearing impaired individuals by affording them the opportunity to better communicate with teachers, performers, and other public speakers.

III. Legal Basis: Action is proposed in accordance with Sections 4(i), 302, 303(e), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended.

IV. Description, potential impact and number of small entities affected: The proposed changes in the regulations would affect only a few small entities. An estimate of the number of such parties affected is six or less. There would be no cost to the manufacturers to comply with the proposed rules because they would not be required to make any changes to their current operations. The new rules would simply provide them with a design option which they did not have before.

V. Recording, record keeping and other compliance requirements: No changes in record keeping requirements are proposed. However, there may be an increase in the number of measurements performed on each auditory assistance device in preparation for filing of an equipment authorization.

VI. Federal rules which overlap, duplicate or conflict with the proposed rule: None.

VII. Any significant alternative minimizing the impact on small entities and consistent with the stated objectives: None.

[6] The field strength limit in Section 15.209 is over 50 dB less than the limit for auditory assistance devices.

[7] *See* 47 CFR Sections 90.79(d) and 90.257(b).

10. *Comment Provisions.* Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before **September 9, 1991** and reply comments on or before **October 9, 1991**. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

11. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* Section 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

12. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who makes or submits a written *ex parte* presentation shall provide on the same day it is submitted two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding(s) to which it relates and the fact that two copies of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation.

13. Any person who in making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation. Section 1.1206.

14. *Paperwork Reduction Act Statement.* The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

15. Accordingly, IT IS PROPOSED THAT Part 15 of the Commission's rules and regulations BE AMENDED as set forth in the Appendix below.

16. For further information on this proceeding contact the Technical Standards Branch, Room 7122, Office of Engineering and Technology, Federal Communications Commission, Washington, D.C. 20554, (202) 653-6288.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Title 47 of the Code of Federal Regulations, Part 15 is proposed to be amended to read as follows:

1. The authority citation for Part 15 continues to read as follows:

AUTHORITY: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. Section 15.205(a) is revised to read as follows:

Section 15.205 Restricted bands of operation.

(a) Except as shown in paragraph (d) of this section, only spurious emissions are permitted in any of the frequency bands listed below:

MHz	MHz	MHz	GHz
0.090 - 0.110	156.7 - 156.9	2200 - 2300	9.0 - 9.2
0.49 - 0.51	162.0125 - 167.17	2310 - 2390	9.3 - 9.5
2.1735 - 2.1905	167.72 - 173.2	2483.5 - 2500	10.6 - 12.7
8.362 - 8.366	240 - 285	2655 - 2900	13.25 - 13.4
13.36 - 13.41	322 - 335.4	3260 - 3267	14.47 - 14.5
25.5 - 25.67	399.9 - 410	3332 - 3339	15.35 - 16.2
37.5 - 38.25	608 - 614	3345.8 - 3358	17.7 - 21.4
73 - 74.6	960 - 1240	3600 - 4400	22.01 - 23.12
74.8 - 75.2	1300 - 1427	4500 - 5250	23.6 - 24.0
108 - 121.94	1435 - 1626.5	5350 - 5460	31.2 - 31.8
123 - 138	1660 - 1710	7250 - 7750	36.43 - 36.5
149.9 - 150.05	1718.8 - 1722.2	8025 - 8500	Above 38.6

* * * * *

3. The section heading of Section 15.237 is revised to read as follows:

Section 15.237 Operation in the bands 72.0 - 73.0 MHz, 74.6 - 74.8 MHz and 75.2 - 76.0 MHz.

* * * * *

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-604

In re Applications of

MARTINSVILLE COMMUNITY WORKSHOP, INC.
Channel 213C3
Martinsville, Virginia — File No. BPED-860130MG

VISION COMMUNICATIONS, INC.
Channel 212C2
Roanoke, Virginia — File No. BPED-880801ME

For Construction Permit for a New
Noncommercial Educational FM Station

Appearances

Julian P. Freret, Esq., on behalf of Martinsville Community Workshop, Inc.; *Steven C. Schaffer, Esq.* on behalf of Vision Communications, Inc.; and *Charles E. Dziedzic, Esq.*, and *Robert Zauner, Esq.* on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

SUMMARY DECISION OF ADMINISTRATIVE LAW JUDGE RICHARD L. SIPPEL

Issued: June 11, 1991; Released: June 18, 1991

PRELIMINARY STATEMENT

1. This is a ruling on Motion For Summary Decision filed on April 16, 1991, by Martinsville Community Workshop, Inc. ("Workshop") and Motion For Summary Decision filed on May 6, 1991, by Vision Communications, Inc. ("Vision"). Also under consideration in connection with rulings below are the following pleadings filed by Vision: Supplement To Motion For Summary Decision filed May 10, 1991; Second Supplement To Motion For Summary Decision filed May 17, 1991; and Petition For Leave To Amend filed May 17, 1991. The Bureau's Comments were filed on May 30, 1991.

2. The Workshop and Vision applications are for different communities and different channels (Channel 213C3 for Workshop and Channel 212C2 for Vision). The proposed facilities are 43.9 miles apart and the Bureau's engineering analysis disclosed signal overlap. Thus, the case was set down for hearing based on there being two mutually exclusive applications. *Hearing Designation Order* ("HDO") DA 90-1706, released January 22, 1991, 6 F.C.C. Rcd 361 (MM Bur. 1991).

3. On April 8, 1991, Vision's unopposed Petition For Leave To Amend was granted to specify a change in Vision's transmitter and antenna location. The Bureau supported the amendment and its engineers have concluded that use of Vision's proposed directional antenna at Vision's proposed new site would eliminate the offending overlap. The issue of mutual exclusivity would thereby be resolved. The engineering amendment was accepted. *See Order* FCC 91M-1243, released April 10, 1991.

4. Vision's application also disclosed that its purpose was educational but there was no mention of educational ties to any school. *HDO* at Para. 4. And in its application filed on August 1, 1988, Vision reported that it was not financially qualified but that it was in the process of obtaining its necessary financing. *HDO* at Para. 5. Appropriate issues were set by the Bureau in the *HDO*. The *HDO* also cited an issue on share-time. But that issue becomes moot in light of the rulings below on summary decision which dispose of the case in its entirety. A prehearing conference was held before the Presiding Judge on March 27, 1991, at which procedures for a contemplated resolution of this case without trial were discussed.

5. The following issues are set for resolution by summary decision:[1]

> 1. To determine whether Vision is a qualified educational organization as required by 47 C.F.R. §73.503(a).
>
> 2. To determine with respect to Vision whether the applicant is financially qualified.

HDO at Para. 9.

FINDINGS OF FACT

Vision's Educational Mission

6. Vision has submitted Articles of Incorporation ("Articles") dated July 28, 1988, which disclosed its corporate purpose to be "exclusively" for "religious, educational, scientific and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code." On August 3, 1988, the Commonwealth of Virginia issued a certificate of incorporation. On February 21, 1990, based on Vision's description of its activities and its organic corporate documents, the IRS declared Vision to be tax exempt under Section 501(c)(3). Those documents were not before the Bureau when the issue was added to test Vision's qualifications for treatment as an educational institution.

7. Vision's Articles further disclose that Vision was created to:

> - - - reach and serve people of all religions with programming designed to inform and educate them as productive citizens, irrespective of their particular religious beliefs [and] to conduct an educational outreach by producing and/or distributing radio programming, records, music and literature - - -.

Vision also stated in its application its educational goal and plans to broadcast general educational programs on subjects such as Bible study, moral values, career plan-

ning, financial planning, homemaking, child rearing, nutrition and health. Vision has created organizations in the Roanoke area that focus on youth activities, i.e., "For Teens Only" and the "Youth Evangelical Associations" which organizational efforts, through local schools, have supported Vision's fund-raising efforts to obtain its needed financing. (*See* Statement of Worth M. Miller (Vision's Director/President) entitled "Advancement of Educational Programs" submitted to the Commission on May 16, 1991.) Vision's President also represents to the Commission that it has worked through the Cornerstone Church of Roanoke which offers college elective courses through the Life Bible College and, although unaccredited, its courses are monitored by Calvary Ministries International of Indianapolis, Indiana. (*Id.*) The courses offered include secular subjects such as secretarial and business management and teaching technique.

Financial Qualifications

8. Vision seeks to show cause for amending its application to show its financial qualifications. Mr. Miller's declaration discloses that when Vision filed on August 1, 1988, Vision was negotiating with a group that had expressed an interest in supporting the station and a family oriented book store. In October 1990 the group created Greendale Company, Inc. ("Greendale") to fund Vision's studio, construction and operations for three years. Vision intends to staff its operations with volunteer disc jockeys and office staff.

9. Individuals associated with Vision have been soliciting for contributions since Vision filed. When the loan from Greendale had not materialized Vision raised $85,000 in loans and $30,000 in gifts by the date of its filing, and in a supplemental pleading Vision disclosed that additional funds were raised that permitted a deposit in Vision's bank account of $116,500. Also, there was a letter provided from the President of Greendale dated February 25, 1991, which stipulates that $25,000 was available for radio booths that had been completed in November 1990, that the remaining $115,000 would be issued at Vision's request for construction and operating costs, and that Greendale agreed to donate broadcast office space for three years. Vision has submitted cost estimates for an antenna ($58,672), operating expenses for the first three months ($11,486) and legal fees ($1000 per month). Mr. Miller attests to the fact that Vision is current as to its legal and engineering expenses.

10. Vision has demonstrated that it has available $116,500 in funds, deposited in a bank account over which Mr. Miller has control, which funds are shown to be adequate to meet anticipated construction and first quarter operations of $94,330.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

Vision's Application

11. Vision represents that it was receiving advice from different counsel when it filed and appears at one point to have been acting without legal advice. At that time, Vision failed to fully disclose facts regarding its educational purposes that would have avoided the issue being cited in the *HDO*. Specifically, Vision now discloses Articles of Incorporation that were in existence when filed in 1988 and that state a non-profit educational purpose. Later, Vision received an IRA certificate reflecting that it is qualified for a tax-exempt organization. Finally, Mr. Miller has disclosed specific educational institutions through which Vision provides educational assistance. There is now sufficient reliable evidence in the record to conclude that Vision is a qualified educational organization. The Bureau supports that conclusion. *See* Bureau Comments at 2-3.

12. Vision is an educational institution that is not driven by any profit motive. When Vision filed its application it disclosed with truth and candor that it was not financially qualified but that it was in the process of obtaining financing. In order to meet its burden, Vision must meet the six-point requirements of *Erwin O' Conner*, 22 F.C.C. 2d 140, 143 (Review Bd 1970). Vision has met its showing of good cause and, under circumstances unique to this noncommercial case, has shown its due diligence.

13. Vision started this venture as an educational institution that did not have any funds and that would need to raise funds through loans and by donations. Vision had no control over the time it would take to raise funds in those ways. This is not like the case of a venture for profit that has investors with funds or with access to funds. Therefore, an allowance should be made in making an equitable assessment of Vision's "due diligence" for the nature of the entity as a non-profit educational institution without the customary access to commercial funds.[2] Miller worked through "volunteers" to contact individuals who later joined together to become Greendale. Those volunteers were not motivated by profits expected from an investment. Rather charity and public interest drove the effort. Miller obtained a commitment letter from Greendale in February 1991, and when that failed, Miller obtained individual loans and donations sufficient for him to bank $116,500. That result is more convincing than a bank letter showing only a willingness to consider making a loan in the future.

14. Therefore, it is concluded that Vision acted with due diligence; that the amendment is not required by Vision's voluntary act; that rather than adding an issue the amendment addresses one set by the Bureau; and that acceptance of the amendment will permit resolution of the issue and the case by summary decision. It is noted that there are no oppositions and therefore no other party will be prejudiced by the amendment. *Erwin O' Conner*, *supra*. In fact, in this particular case, the only other applicant party has no interest in the grant to Vision in view of the earlier engineering amendment. Therefore, it is concluded that there is substantial reliable evidence to support the acceptance of Vision's financial amendment, to accept it, and to summarily resolve the financial issue in favor of the applicant. The Bureau supports such relief. *See* Bureau's Comments at 4-5.

Workshop's Application

15. There are no pending issues relating to the application of Workshop for a claimed allocation that is different from Vision's and Workshop's application will no longer present an issue of mutual exclusivity. *Cf. Ashbacker Radio Co.* v. *F. C. C.*, 326 U.S. 327 (1948). Therefore, no genuine issue of material fact exists for determination as to Workshop's application and summary decision will be granted in its favor. 47 C.F.R. §1.251(a)(1).

Legal Conclusions

16. Vision and Workshop were assigned the burdens of establishing that summary decision would be appropriate based on their respective papers. *Summary Decision Procedures*, 34 F.C.C. 2d 485, 487-88 (1972). Both Vision and Workshop have met their burdens and the Bureau supports the relief requested.

RULINGS

IT IS ORDERED that the Motion For Summary Decision filed on April 16, 1991, by Martinsville Community Workshop, Inc. IS RESOLVED in favor of the applicant.

IT IS FURTHER ORDERED that the application of Martinsville Community Workshop, Inc. (File No. BPED-860130MG) for a permit to construct a new Noncommercial Educational FM Station to operate on Channel 213C3 at Martinsville, Virginia IS GRANTED.

IT IS FURTHER ORDERED that the Motion For Summary Decision filed on May 6, 1991, by Vision Communications, Inc. IS RESOLVED in favor of the applicant.

IT IS FURTHER ORDERED that the Petition For Leave to Amend filed on May 17, 1991, by Vision Communications, Inc. IS GRANTED and the amendment, that relates to the educational institution and financial qualifications issues, IS ACCEPTED.

IT IS FURTHER ORDERED that the application of Vision Communications, Inc. (File No. BPED-880801ME) for a permit to construct a new Noncommercial Educational FM Station to operate on Channel 212C2 at Roanoke, Virginia IS GRANTED.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED by summary decision.[3]

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel
Administrative Law Judge

FOOTNOTES

[1] With the removal of any signal overlap in the ruling accepting Vision's engineering amendment (FCC 91M-1243, *supra*), there are no issues to preclude summarily granting Workshop's application and that is done in the rulings below.

[2] It is recognized that there are situations where a non-profit educational institution that is richly endowed or which has read access to wealthy donors can readily establish a reasonable financing certainty when it files. But not all non-profit institutions fall into that category. Vision has shown that its resources were meager when it first filed. But its application was accepted under honest disclosure of present unavailability of funds and so those circumstances are taken into account in assessing its due diligence. Vision has now deposited $116,500 in its bank account which represents cash immediately available to Vision for funding its station.

[3] This *Summary Decision* disposes of this case in its entirety. It shall become effective 50 days after its public release if exceptions are not filed within 30 days thereafter, unless the Commission elects to review the case on its own motion. 47 C.F.R. §1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-424

In re Applications of

WESTERN CITIES BROADCASTING, INC. File No. BRH-891201XU

For Renewal of License of
Station KQKS(FM) on Channel 282C1
at Longmont, Colorado

AMADOR S. BUSTOS File No. BPH-900228MB

For Construction Permit for a New
FM Broadcast Station on Channel 282C1
at Longmont, Colorado

LONGMONT BROADCASTING CORPORATION File No. BPH-900216MA

For a Construction Permit for a New
FM Broadcast Station on Channel 282C1
at Longmont, Colorado

WESTERN CITIES BROADCASTING, INC. File No. BLH-890104KC

For a License to Cover Minor
Changes to Station KQKS(FM)
Longmont, Colorado

MEMORANDUM OPINION AND ORDER

Adopted: June 10, 1991; Released: June 20, 1991

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. On April 22, 1991, Amador S. Bustos (Bustos), pursuant to 47 CFR 1.301(a)(2), filed an appeal from the *Memorandum Opinion and Order*, FCC 91M-1307, released April 16, 1991, in which Administrative Law Judge Arthur I. Steinberg (ALJ) ordered the production of four specific documents after rejecting Bustos' privilege claim. Longmont Broadcasting Corporation (Longmont) opposed the appeal on April 24, 1991. We affirm the ALJ's *Order*, *supra*, with one exception.

2. The general principles which control claims of attorney-client privilege were recently set out in the Commission's *WWOR - TV, Inc.*, 5 FCC Rcd 6261 (1990); *Georgia Public Telecommunications Commission*, 5 FCC Rcd 4560 (1990); and a long line of Board decisions stretching from *Opal Chadwell*, 103 FCC 2d 840 (Rev. Bd. 1986), to *Raveesh K. Kumra*, 5 FCC Rcd 5607 (Rev. Bd. 1990). These cases recognize that:

> (a) The attorney-client privilege protects communications by a client to his attorney made in confidence for the purpose of obtaining legal advice, and "is intended to encourage complete disclosure of facts between client and attorney on the rationale that the latter can act effectively only if fully advised of all pertinent facts by the party he represents." *Opal Chadwell*, 103 FCC 2d 840, 841 (Rev.Bd. 1986) (citing *U. S. v. United Shoe Machinery Corp.*, 89 F. Supp. 357, 358 (D. Mass. 1950)).
>
> (b) Similarly, an attorney's communications to a client may also be protected by the privilege, to the extent that they are based on or contain confidential information provided by the client, or legal advice or opinions of the attorney. *Schenet v. Anderson*, 678 F. Supp. 1280 (E.D. Mich. 1988).

Raveesh K. Kumra, 5 FCC Rcd at 5607.

3. Bustos argues that Document Nos. 3 and 13 are fully protected by the attorney-client privilege. (App. 2, 3-4.) Longmont responds that Bustos' appeal "totally ignores *WWOR, Inc., supra,* " which the ALJ applied in his rulings. Document No. 3 is a letter from another attorney "refusing to take Bustos' case." (Appeal, p. 2). The ALJ following *WWOR, Inc., supra*, ruled that this document was not protected because it did not contain any "confidential facts" or disclose any "mental impressions, conclusions, opinions and/or legal theories." *Order*, para. 4. Document No. 13, a letter to current counsel from Bustos, discussed some of the financial "arrangements by which the client retained the attorney." (Appeal, p. 3.) Again, following *WWOR, Inc.*, the ALJ ruled that "paragraph 4 may be deleted as it is a request by Bustos for legal advice," but the rest of the document was ordered disclosed because it "contains no confidential facts, and discloses no mental impressions, conclusions, opinions, and/or legal theories." *Order*, para. 13.

4. As Bustos' competitor points out, *WWOR, supra*, the controlling Commission precedent on which the ALJ relied, is not even discussed in Bustos' appeal. While the Commission and the Board have given sensitive attention to the attorney-client privilege, blunderbus invocation of that privilege is not favored by the law. *See e.g., Raveesh K. Kumra, supra*, 5 FCC Rcd at 5607 para. 4:

> The "privilege is to be confined strictly within the narrowest possible limits consistent with the logic of its principle," *Anderson v. Torrington Co.*, 120 F.R.D. 82, 85 (N.D. Ind. 1987), and the burden of establishing the existence of the privilege is on the person asserting it. *Schenet*, 678 F. Supp. at 1282.

The ALJ acted in accordance with these principles when he deleted the one paragraph which contained privileged information, and the rest of his ruling is firmly based on *WWOR, Inc.*, 5 FCC Rcd at 6263, where the Commission held that: "Even though such documents often entail an element of counsel's strategy, the Courts have regularly denied documents protection that discuss the terms and conditions of employment or the employment purpose."

5. Document 11 contains sensitive legal advice from counsel to his client. It was ordered produced by the ALJ because a copy of the letter had been sent to "Bustos' consulting engineer" and any privilege was deemed waived. On this point we agree with Bustos that *Georgia Public Telecommunications Commission, supra*, was misapplied. Generally, as we noted in *Kumra, supra*:

> Voluntary disclosure of an otherwise privileged communication to a third person who lacks a commonality of interest with either the client or his attorney breaches the confidentiality of the attorney-client relationship and therefore waives the privilege. *See In re Sealed Case*, 676 F.2d 793, 809 (D.C. Cir. 1982).

In *Georgia Public, supra*, the Commission followed this general principle and found that an applicant had waived its attorney-client privilege concerning a letter sent to a third party which had formed the applicant. The applicant had not established that the third party was a joint client, agent, or alter ego, or that the sending of the letter to the third party was essential to the provision of legal services to the applicant.

6. Here, unlike *Georgia Public, supra*, the third party was a consulting engineer who does qualify as "an agent" of the client, a needed "technical expert." *See Stanley Works v. Haeger Potteries, Inc.*, 35 F.R.D. 551 (N.D. Ill. 1964). Moreover, we have previously recognized that a consulting engineer is "essential to the provision of legal services to the applicant." *Opal Chadwell, supra*, 103 FCC 2d at 846, protecting documents of a client's "attorneys or consulting engineer [prepared] in the reasonable anticipation of litigation." Document 11 is entitled to full and similar protection.

7. Finally, Bustos argues that Document 22 should be protected because it contains "confidential . . . commercial information" and that such information is entitled to protection" akin to that stated in Rule 26(c)(7) of the Federal Rules of Civil Procedure." Appeal p. 4. However, the Commission's Rules of Practice and Procedure, 47 CFR § 0.459, contain specific provisions which must be complied with by an applicant who seeks to protect such "proprietary" information, and the Board has stressed that requests for confidentiality must conform to Section 0.459 of the rules, and that "casual" requests for confidentiality will not be honored. *Religious Broadcasting Network*, 5 FCC Rcd 5828, n. 1 (Rev. Bd. 1990).

8. Bustos did not even attempt to comply with the applicable Commission rules. Nevertheless, the ALJ ordered the document produced with the dollar amounts redacted, and he granted Bustos' request for a protective order so that "no party to this proceeding shall disclose any of the information contained in this document to any third party, except for purposes related to discovery and trial of this proceeding." On the privilege point, we commend the ALJ's sound exercise of judgment and discretion, and affirm his ruling.

9. ACCORDINGLY, IT IS ORDERED, That the Appeal of Amador S. Bustos filed April 22, 1991 IS DENIED, except to the extent indicated in para. 6.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

WALTER P. FABER, JR. File No. BMPH-860709IG

For Modification of
Construction Permit

MEMORANDUM OPINION AND ORDER

Adopted: June 7, 1991; Released: June 19, 1991

By the Commission:

1. Commission has before it the Petition for Reconsideration ("petition") filed by Walter P. Faber, Jr. ("Faber") on August 14, 1989.[1] Faber, permittee of FM Station KQMB, Channel 274C, Midvale, Utah, requests reconsideration of our *Memorandum Opinion and Order*, 4 FCC Rcd 5492 (1989) ("*MO&O*"), affirming the Mass Media Bureau's ("Bureau") action dismissing the captioned application to increase effective radiated power, increase antenna height above average terrain and relocate the KQMB transmitter, and denying Faber's request for a waiver of Section 73.207 of the Commission's Rules.

2. In his petition, Faber states that our previous action was predicated on the conclusion that grant of Faber's request for waiver of the Commission's intermediate frequency ("IF") spacing rules without a threshold showing that fully-spaced or less short-spaced sites are unavailable would contravene established Commission precedent and practice. Faber contends that the *MO&O* failed, however, to address the Commission precedent supporting Faber's request, the long-standing and consistent Bureau practice of granting such waivers pursuant to delegated authority after the Commission had explicitly confirmed that the staff should do so, Faber's independent effort to ascertain what the current Commission policy was before he filed his application, and the advice he received from Commission supervisory staff members confirming his view of the Commission's policy.

3. In light of these facts, Faber asserts, his application should have been granted because the Bureau's action reversed established, articulated Commission policy notwithstanding what he characterizes as "conclusory, *post hoc* Commission pronouncements relied upon in the *MO&O* without notice and explanation." Petition at ii. Finally, Faber contends that even were his view of the waiver standard incorrect, his application still should have been granted in light of the Commission's past statements and the Bureau's past practices, his own attempts to ascertain Commission policy, and the advice he received from Commission personnel. He argues that both Commission[2] and court precedent [3] require that Faber's application be granted under such circumstances, even if it were in the context of an order advising all future applicants of the "correct" policy which would be applied in the future. Petition at iii.

4. Faber places heavy reliance on a 1974 Commission action granting an IF spacing waiver for KKSS(FM), File No. BPH-8221. Faber contends that the Commission's grant was based solely on a showing that KKSS's 20 mV/m contour would not overlap with the 20 mV/m contour of another commercial facility and that no threshold showing was required. Faber also cites *John Lamar Hill (KJLH)*, 51 FCC 2d 1150 (1975), as further precedent for the proposition that prior to the filing of his application the Commission did not require the threshold showing concerning site availability in IF waiver cases. In that case, the Commission in 1975 issued KJLH a Special Temporary Authorization (STA) to operate a temporary transmitter and conduct field strength measurements to determine whether its proposed operation at the short-spaced site specified in its application would create objectionable IF interference with Station KUSC. In connection with these tests, which were opposed by a third station, KKDJ, the Commission stated,

> It is true, as KKDJ alleges, that the Commission stated that if no objectionable interference resulted, waivers [of the IF spacing rules] would be warranted. This was said because we believe that the only valid objection to grant of the waivers would be if objectionable interference resulted.

John Lamar Hill, 51 FCC 2d at 1152. At that point in time, there was no 20 mV/m contour overlap between KUSC and KJLH's proposal. After a hearing where a variety of issues were explored, the Review Board denied KJLH's application in light of evidence that the proposed relocation would lead to a substantial loss of existing service within the KJLH service area and the degradation of service to its community of license, that the KJLH 20 mV/m contour would overlap with that of KUSC, which had subsequently relocated, that KJLH would not cover its community of license with a city-grade signal, and that the licensee was seeking a *de facto* reallocation from the smaller community of Compton, California, to Los Angeles. *See John Lamar Hill*, 70 FCC 2d 153 (Rev. Bd. 1978) aff'd FCC 81-339, July 16, 1981. Faber contends that the Board held, in this context only, that KJLH could not justify moving to a site where the two station's 20 mV/m contours would overlap in the absence of a threshold showing that other suitable sites were not available or that its proposed broadcast service to the public would offset the deficiencies inherent in its technical proposal. Faber asserts that this ruling did not address, however, the waiver standard to be applied where the 20 mV/m contours would not overlap, nor did, or could, the Board overrule the Commission's own earlier articulation of the standard to be applied when it addressed the KJLH application in 1975, at a point in time when there was no 20 mV/m overlap with KUSC.

5. We do not agree with Faber that the Review Board in *John Lamar Hill* enunciated a narrow IF waiver standard, one to be applied *only* in cases where there was 20 mV/m contour overlap. The concept of a threshold showing had been evolving at the Commission since 1976 in the context of co-channel and adjacent channel cases, which were cited by the Board for the general proposition that a similar showing should be required in IF short-spacing cases. In adopting all FM spacing requirements, including the IF spacing rules, the Commission considered and specifically rejected the use of interference con-

tours for determining spacing requirements, opting instead for strict mileage requirements. *FM Broadcast Rules*, 40 FCC 747 (1962); *IF Interference Protection*, 45 FCC 2541 (1965). However, when the Commission adopted the IF spacing requirements, it stated:

> These mileages represented the distances required to prevent overlap of the 20 mV/m contours rounded out to the nearest 5 miles, since the test indicated that elimination of such overlap was necessary to avoid this type of interference.

45 FCC at 2541-41. It thus appears that the above language is largely responsible for the subsequent focus, both by the Commission and the staff, upon the lack of 20 mV/m contour overlap rather than the threshold showing of nonavailability of a fully-spaced site.

6. The Review Board in *John Lamar Hill* correctly perceived that the IF spacing requirements would become meaningless if all an applicant had to do to obtain a waiver would be to submit evidence of no 20 mV/m contour overlap. Such a waiver policy would thus mean a Commission return to the use of contour overlap, a system previously rejected, for purposes of determining IF channel separations. The Review Board recognized that either the existence or lack of a 20 mV/m contour overlap was but *one* of the public interest factors to be weighed in an IF waiver request after the threshold requirement had been met. 70 FCC 2d at 166. In 1980, the Commission in an unrelated case cited with approval the Review Board's threshold showing requirement in *John Lamar Hill. Lockhart, Texas*, 81 FCC 2d 171, 176 (1980). We believe that our decision in *Lockhart*, as well as our affirmation without discussion in 1981 of the Review Board's decision in *John Lamar Hill* thus marked a change in Commission policy concerning IF short spacing waivers and that, thereafter, it was error for the staff not to require a threshold showing in such cases.[4]

7. We agree with Faber that prior to 1980-81, Commission decisions on IF short spacing waiver cases and subsequent staff actions apparently did not require a threshold showing if there was no 20 mV/m contour overlap. However, even if we were to conclude that our 1980-81 affirmation of the Review Board did not constitute a change in the Commission's IF waiver standard, it is nevertheless well established that we may now change that standard in the course of deciding this, or any other, case if a reasoned analysis for such change is provided.

> An agency's view of what is in the public interest may change either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.

Greater Boston Television Corporation V. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert denied* 403 U.S. 923(1971).

8. It is today clear to us that IF interference has more serious consequences than co-channel and adjacent-channel interference. *Third Report and Order, MM Docket No. 86 - 144, Review of Technical Parameters for FM Allocation Rules of part 73, Subpart B. FM Broadcast Stations (IF Distance Separation Requirements)*, 4 FCC Rcd 3562, n.1 (1989). Because most consumer FM broadcast receivers use an intermediate frequency of 10.7 mHz for amplification and bandwidth processing, overlapping FM signals separated by 10.6 or 10.8 mHz can cause listeners to receive distorted signals from one of the stations involved no matter how they set their receivers' tuner dial. Thus, IF interference can prevent listeners from receiving clear signals from *any* FM station. This warrants stricter scrutiny of requests for waiver of IF spacing requirements than of requests for waiver of the co- and adjacent channel spacing requirements. For this reason, the Commission recently stated with respect to IF spacing requirements:

> Notwithstanding our use, in this proceeding, of contour overlap calculations to define protection levels, meeting or exceeding the required separation distances *continues to constitute the only measure of compliance with § 73.207*. Applicants seeking a waiver of § 73.207 are advised that alleged discrepancies between the separation distances in the revised rule and the contour overlap calculations presumed to underlie them, do not in themselves constitute sufficient ground for such a waiver. Other factors germane to each individual case (*e.g.*, lack of an alternative antenna site) *must* be considered when such waiver requests are evaluated.

Id. at n.21 (emphasis added). Moreover, in amending our rules to permit short-spaced FM station assignments by using directional antennas, the Commission recently again noted that IF interference can impair the reception of a large number of stations and stated that applicants seeking a waiver of the IF spacing requirements "must continue to show that fully-spaced or less short-spaced sites are not available and that grant of the waiver is in the public interest. Demonstrations that predicted contours will not overlap will not constitute grounds for a waiver." *Report and Order* in MM Docket 87-121, 4 FCC Rcd 1681, 1694 n.1(1989).

9. The U.S. Court of Appeals for the District of Columbia Circuit in an analogous context has stated:

> The Commission, in an intervening proceeding, has determined that the policy previously applied in cases like this one no longer serves the public interest, convenience and necessity, and therefore will not be applied henceforth. We hold that in such circumstances an agency cannot be required to apply a policy it has rejected. Such a requirement would amount to a command to the agency to disregard its statutory mandate: it would have to employ a policy that, by its own determination, did not serve the public interest.

Washington Association for Television and Children v. FCC, 665 F.2d 1264, 1268 (D.C. Cir. 1981) (footnote omitted); *see also Arnold L. Chase (WTIC-TV)* 5 FCC Rcd 1642, 1646 (1990) (application of a subsequently adopted waiver standard). We believe that the court's rationale, above, is equally applicable in the instant case, even if we assume that no threshold showing was required prior to this case and the contemporaneous Rule Making proceed-

ings. In light of the strong policy considerations underlying these technical requirements and the fact that Faber will be able to offer service to Midvale, *see* paragraph 13, *infra*, we find that there is no "manifest injustice" in applying the threshold showing policy in this case. *See Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074, 1081-82 (D.C. Cir. 1987).

10. Contrary to Faber's assertion, we also do not believe that the present case is so similar to the *Orange Park* and *Clay Television* procedents, that we are nevertheless required to apply a waiver standard we no longer find to be in the public interest. In *Orange Park*, originally a comparative proceeding involving two mutually exclusive applicants, the Commission had denied Orange Park's short spacing waiver request and permitted the remaining applicant, Clay Television, to cure a violation of the major change amendment rule, 47 CFR § 73.3572(b), rather than suffer dismissal. The court vacated that portion of the Commission's decision which permitted Clay Television to amend its application to cure its violation of Section 73.3572(b). The court said that the Commission could waive Section 73.3572(b) if it found that Clay Television's violation resulted from reasonable reliance on the Bureau's then incorrect practices. 811 F.2d at 674-75. Because the Commission had assumed such reliance without an adequate factual foundation, the court remanded the proceeding to the Commission to determine if Clay Television had reasonably relied on the Bureau's practice. *Id.* at 675.

11. On remand, the Commission held that Clay Television's attorney had adequately researched the matter and determined that no Commission level precedent existed as to how amendments filed before the "A" cut-off date under new Bureau processing procedures should be treated in determining whether a major amendment had occurred for purposes of Section 73.3572(b). The Commission further held that in light of this diligent research, the attorney's subsequent reliance on a supervisory processing attorney's advice was reasonable and that good cause therefore existed for waiving Section 73.3572(b) and allowing Clay Television to amend its application to bring it into compliance with the rule. We stated that further proceedings in this protracted comparative licensing case would not serve the public interest and that it had been over seven years since the first-filed application was tendered to the Commission, yet the people in and around Orange Park, Florida were still waiting for the new television service. 3 FCC Rcd at 1590-91.

12. In the instant case, while the factual pattern is similar to that in the *Orange Park/Clay Television* proceeding in terms of arguably reasonable reliance following arguably diligent research, there are crucial differences. First, the court in *Orange Park permitted* the Commission to waive its administrative processing rules on the basis of detrimental reliance by an applicant on erroneous past practices and staff advice; it did not *require* the Commission to do so. Even so, we were obliged to evaluate the equity arguments favoring waiver and balance them against any competing concerns that would be served by strict enforcement of the processing standard. On this basis, we determined which approach best served the public interest. We concluded that the administrative certainty and finality considerations underlying the processing criteria were, under the circumstances, unbalanced by the equity and fairness concerns raised by the applicant. In this case, however, substantially different considerations are at issue. Specifically, we are here asked to subordinate critical technical requirements for the sake of equity arguments similar to those advanced by *Clay Television*. The Commission's longstanding policy, however, has been to refuse to base waivers of rules designed to prevent interference upon non-technical considerations. This policy has been approved by the courts. *See e.g., North Texas Media, Inc. v. FCC*, FCC 84-456 (released October 5, 1984), *aff'd*, 778 F.2d 28 (D.C. Cir. 1985); *ICBC Corp. v. FCC*, 716 F.2d 926 (D.C. Cir. 1983). *See also Universal Broadcasting of Indiana, Inc.*, 102 FCC 2d (1986). In considering requests for waiver of co-channel and adjacent channel spacing requirements, the Commission has on rare occasion relaxed its threshold technical requirement upon a showing of "an unusual combination of public interest factors." *Caloosa Television Corp.*, 3 FCC Rcd 3656, 3657 (1988), *recon. denied*, 4 FCC Rcd 4762 (1989). *See also Fort Myers Broadcasting Co.*, 77 FCC 2d 863 (1980). A crucial distinction here, however, is that IF interference has more serious consequences than co-channel and adjacent-channel interference. As discussed above, interference can prevent reception of all FM stations. Secondly, in *Clay Television*, the Commission found public interest reasons to waive the rule in question. The proceeding was only remanded by the court for failure to establish an adequate factual foundation for the public interest finding. In the instant proceeding, we have clearly and consistently articulated factual technical reasons why it is not in the public interest to waive the IF spacing rule absent a threshold showing. Accordingly, we conclude that neither the court's holding in *Orange Park* nor our decision in *Clay Television* are controlling precedent in the instant proceeding.

13. Finally, we note that Faber presently has a granted construction permit for a transmitter site from which he can provide complete signal coverage of the city of Midvale as required by 47 CFR § 73.315. Denial of his waiver request thus restricts him from relocating but does not deprive him of a vested property interest. As the court observed in *Orange Park*, only the loss of a vested property interest would mandate that due weight be given such loss in considering whether to waive application of a general rule in the interest of fairness. 811 F.2d at 674; *see also Reuters Limited v. FCC*, 781F.2d 946, 950 n.5 (1986).

14. Accordingly, IT IS ORDERED, That the Petition for Reconsideration field by Walter P. Faber, Jr, on August 14, 1989, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna Searcy
Secretary

FOOTNOTES

[1] On the same date, Faber also filed a "petition for leave to file supplement" which will be associated and made a part of the petition for reconsideration.

[2] *Clay Television, Inc.*, 3 FCC Rcd 1590 (1988) (*"Clay Television"*).

[3] *Orange Park Florida T.V., Inc. v. FCC*, 811 F.2d 664 (D.C. Cir. 1987) (*"Orange Park"*).

[4] Faber lists a number of staff grants of IF short-spaced waivers without a threshold showing between 1981 and 1985. As we stated in our earlier MO&O, these grants were in error with regard to the Commission's position on threshold showings resulting from the Review Board's decision in *John Lamar Hill*. 4 FCC Rcd at 5493. Such staff decisions do not bind the Commission. *Amor Family Broadcasting Group v. FCC*, 918 F. 2d 960 (D.C. Cir. 1990)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRI-J ENTERPRISES, INC. File No. I-T-C-91-098

Application for authority to operate as an international resale carrier.

NATIONAL TELESERVICES COMPANY, INC. File No. I-T-C-91-101

Application for authority to operate as an international resale carrier.

NATIONAL TECHNICAL ASSOCIATES, INC. File No. I-T-C-91-105

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 4, 1991; Released: June 19, 1991

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by TRI-J Enterprises, Inc., National Teleservices Company, Inc. and National Technical Associates, Inc.

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-91-098, I-T-C-91-101 and I-T-C-91-105 ARE GRANTED, and the applicants are authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1, and US Sprint's Tariffs F.C.C. Nos. 1 and 2 between the U.S. and the points listed in those tariffs.

3. IT IS FURTHER ORDERED that both the TRI-J Enterprises, Inc. and National Teleservices Company, Inc. requests, dated June 3, 1991, for temporary authority *nunc pro tunc* to operate as international resale carriers are DENIED. Accordingly, this authorization is without prejudice to any further action the Commission might take with respect to TRI-J Enterprises, Inc.'s and National Teleservices Company, Inc.'s provision of international services without appropriate authorization.

4. Copies of any operating agreements entered into between each applicant and its correspondents shall be filed with the Commission within 30 days of their execution.

5. IT IS FURTHER ORDERED that each applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

6. IT IS FURTHER ORDERED that each applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORP. File No. I-T-C-91-106

Application for authority to acquire and operate facilities for service between the U.S. and Nicaragua.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 10, 1991; Released: June 19, 1991

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to Nicaragua by MCI.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-91-106 IS GRANTED, and MCI is authorized to:

a. lease from Comsat and operate 60 voice-grade satellite circuits between the Andover, Maine earth station and an appropriate INTELSAT satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Nicaragua furnished by MCI's correspondent in Nicaragua;

b. use said facilities to provide MCI's regulaly authorized services between the U.S. and Nicaragua and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between MCI and its correspondent in Nicaragua and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

6. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

7. IT IS FURTHER ORDERED that the applicant shall file semi-annual circuit reports pursuant to Section 63.10(b) of the Commission's Rules, 47 C.F.R. Section 63.10(b).

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

US SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP — File No. I-T-C-91-107

Application for authority to acquire and operate facilities for service between the U.S. and Kuwait.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 10, 1991; Released: June 19, 1991

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to the Kuwait by US Sprint.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-91-107 IS GRANTED, and US Sprint is authorized to:

a. lease from Comsat and operate 90 IDR satellite circuits between Beeline, Florida earth station and an appropriate INTELSAT satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Kuwait furnished by US Sprint's correspondent in the Kuwait;

b. use said facilities to provide US Sprint's regulary authorized services between the U.S. and Kuwait and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between US Sprint and its correspondent in Kuwait and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

6. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

7. IT IS FURTHER ORDERED that the applicant shall file semi-annual circuit reports pursuant to Section 63.10(b) of the Commission's Rules, 47 C.F.R. Section 63.10(b).

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-302

In re Applications of

SANDRA M. ADAIR VAUGHAN — File No. BPH-880630MQ

PETERSBURG FM BROADCASTERS LIMITED PARTNERSHIP — File No. BPH-880630NX

For Construction Permit for
New FM Station, Channel 262A,
Petersburg, Virginia

MEMORANDUM OPINION AND ORDER

Adopted: June 12, 1991; Released: June 20, 1991

By the Review Board: MARINO (Chairman), BLUMENTHAL and ESBENSEN.

1. By *Initial Decision*, 6 FCC Rcd 1780 (1991) (I.D.), Administrative Law Judge Joseph Chachkin determined, on a comparative basis, that applicant Sandra M. Adair Vaughan (Vaughan) was preferred, and awarded the construction permit at contest to her.

2. On April 29, 1991, Vaughan filed contingent exceptions with the Board; however, Petersburg FM Broadcasters Limited Partnership (FM) did not file any exceptions to the I.D. Thus, pursuant to 47 CFR § 1.276(f), FM's application will be dismissed.

3. ACCORDINGLY, IT IS ORDERED, That the application of Petersburg FM Broadcasters Limited Partnership (File No. BPH-880630NX), pursuant to 47 CFR § 1.276(f) IS DISMISSED; and,

4. IT IS FURTHER ORDERED, That the "Contingent Exceptions to Initial Decision" filed by Sandra M. Adair Vaughan on April 29, 1991, ARE DISMISSED as moot; and,

5. IT IS FURTHER ORDERED, That the application of Sandra M. Adair Vaughan (File No. BPH-880630MQ) for a new Class A FM facility at Petersburg, Virginia IS GRANTED, and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-323

In re Applications of

HS COMMUNICATIONS, INC.	File No. BPH-880505MZ
STACY C. BRODY	File No. BPH-880505NO
PAMELA R. JONES	File No. BPH-880505NR
VPC, LTD.	File No. BPH-880505NS
CHESAPEAKE MEDIA COMMUNICATIONS CORP.	File No. BPH-880505NZ
CRAIG L. SIEBERT	File No. BPH-880505PM
INTRACOASTAL AIRWAVES LIMITED PARTNERSHIP	File No. BPH-880505PN

For Construction Permit for
New FM Station, Channel 271A,
Virginia Beach, Virginia

MEMORANDUM OPINION AND ORDER

Adopted: June 12, 1991; Released: June 20, 1991

By the Review Board: MARINO (Chairman), BLUMENTHAL and ESBENSEN.

1. By *Memorandum Opinion and Order*, FCC 91M-1697, released May 23, 1991 (*Order*), Administrative Law Judge Edward J. Kuhlmann (ALJ) dismissed the application of Chesapeake Media Communications Corp. (Media) from the captioned proceeding. Media filed its "Appeal of Presiding Officer's Ruling" on May 29, 1991.[1] Oppositions were filed by Intracoastal Airwaves Limited Partnership (Intracoastal) and Stacy C. Brody (Brody) on June 4 and June 7, 1991, respectively.

2. *Background*: In setting forth the procedures for the orderly conduct of this proceeding, the ALJ specifically required that all parties were to exchange with opposing counsel their written testimony and/or direct case exhibits on May 3, 1991. The ALJ further ordered that all parties were to notify each other, on May 8, 1991, concerning witnesses expected to appear and present oral testimony at hearing. Finally, May 13, 1991 was ordered as the date for filing objections to the appearances of specific witnesses.

3. On the May 3 exchange date, however, former Media counsel withdrew representation. Yet, not until May 8, 1991 did Media file any document with the ALJ. Then, it only requested an extension of time asking that it be allowed to file its exhibits on May 14, 1991. In considering the matter, the ALJ declared (emphases added):

> Media, in its request for extension of time, does not explain why its exhibits were not prepared by May 3, 1991, why it needed twelve days more, and why it waited until five days after the exhibits were to be exchanged to make its request. *Media does not claim that the withdrawal of its counsel was unexpected* and it does not state when it first learned that counsel was going to withdraw. Nowhere has Media represented that it was prevented from preparing its exhibits because of counsel's inaction or negligence. Nor does it represent that it did not know the exhibits were due on May 3 . . . . When Media's request for an extension was received in this office on May 7, 1991, the day before it was filed, Media was informed by telephone that if it waited until May 14, 1991 to exchange its exhibits, they would arrive *after* the time for the parties to request witnesses (May 8) and for Media to object to the appearance of witnesses (May 13). Contrary to Media's representation in its opposition to the motions to dismiss, Media was not directed to "file" its exhibits on May 8, 1991. The implication of Media's claim is that Media was granted additional time. Media was only informed that if it failed to produce a case before the parties were required to designate witnesses, its exchange would disrupt the orderly conduct of the proceeding and place the parties at a disadvantage in determining whether Media's case required oral examination. *Media did not provide its written case to the parties before May 8 or on May 8.* Instead, Media exacerbated its lateness by *mailing* the exhibits or testimony to the other applicants. This has resulted in the parties being unable to review and request witnesses. It also has resulted in Media not working with the other parties to assist in examining the other applicants. All applicants were informed at the prehearing conference, on September 10, 199[0], that they would have to participate in examining witnesses in order that the Commission might be fully informed about each applicant's proposal . . . . Early on May 20, 1991, Media was informed by this office that its written testimony had not been prepared in the manner required. Media's counsel, who is also an owner, did not return the call until May 21, 1991, shortly before the hearing. Counsel also informed this office that she had another engagement on May 22, 1991. There is no question that [this] will disrupt the orderly conduct of this proceeding and that the disarray which it brings is totally within Media's control. Media has offered no reason whatsoever for not preparing and filing its case on time.

Order, at paras. 3-5. The ALJ also considered a previous Media delict (*id.*, at para. 6):

> Media's principals were to be deposed on April 24, 1991. The schedule was made up by all counsel on April 4, 1991. Leah Stith, a Media principal, was scheduled to appear at 1:00 p.m. on April 24. She did not appear, ostensibly because she was working at her job. She did not object to appearing at the

> agreed to time, she did not inform anyone that she would not appear, and she did not even call to let her counsel know that she would not appear. There is no evidence that she ever tried to arrange another time. The parties waited nearly four hours for her. Since there has been no discovery involving all of Media's principals[,] it would now be necessary to start with an initial examination of Stith during the hearing. Quite aside from the additional time this will require in a seven party proceeding, it has resulted in the parties being unable to plan appropriate questions for Media in light of discovery facts. The process will be handicapped. All of this has occurred without excuse. The administrative process is elastic and can exhibit patience or equity when there is a justifiable reason, that is, if the public interest will benefit. Media has disrupted the proceeding without excuse, and there is no evident benefit to the public interest in a proceeding that has seven applicants.

In view of all the foregoing, the ALJ granted Intracoastal's Motion to Dismiss Media's application (*see Order*, at 3).

4. In its appeal, Media claims (1) that it "is the best qualified of applicants"; (2) that it has "far superior" experience to operate a station; (3) that it "could not otherwise afford to purchase a facility at today's prices"; (4) that it would offer "diversity in programming"; (5) that former counsel's withdrawal "was not unexpected", but counsel did not provide sufficient information to permit " *pro se*, or substitute counsel representation"; (6) that none of the other applicants have been "hampered or harmed" by Media's actions; and (7) that Media principal Stith did later offer to reschedule her deposition.

5. The Commission's Rules, Section 73.3568(b), 47 C.F.R. §73.3568(b), are clear that "[f]ailure to prosecute an application . . . will be cause for dismissal . . . ." The court has affirmed the Board's dismissal of an applicant for failure to timely file required documents when ordered expressly to do so by a presiding ALJ. In so doing, the court held:

> In reviewing the dismissal of an applicant from a comparative proceeding, we think it clear that among the factors appropriate for consideration are the applicant's proffered justification for the failure to comply with the presiding officer's order, the prejudice suffered by other parties, the burden placed on the administrative system, and the need to punish abuse of the system and to deter future misconduct.

Comuni-Centre Broadcasting, Inc., v. F.C.C., 856 F.2d 1551, 1554 (D.C. Cir. 1988) (footnote omitted). The court further observed (*id.*, at 1556 n. 40):

> The Review Board acknowledged [earlier in this proceeding] that in some cases sanctions less severe than dismissal would penalize clients unaware of the laxity of their attorneys. *Cf. Shea v. Donohoe Const. Co.*, *supra* note 22, 254 U.S. App. D.C. at 182, 795 F.2d at 1078. The Review Board stated, however, "we do not believe that [the applicant] may properly escape responsibility for its counsel's dilatoriness, since the filing deadline and prior litigation history were known (or should have been known) by the applicant's principals as well as its counsel." *Rev. Bd. Order*, *supra* note 5, 102 F.C.C. 2d at 1242 n. 4.

6. The Commission has many times declared that "reasonable discretion" vests in its presiding officers, who are responsible for administering the orderly course of adjudicatory hearings. *See* 47 CFR §§1.241 and 1.243; *see also Pan American Broadcasting Co., Inc.*, 89 FCC 2d 167, 170-171 (Rev. Bd. 1982) (and cases cited therein). "Reasonableness" is assessed in light of the circumstances of each case to ensure that a proper balance is struck "between the need of the Commission to protect the integrity of its procedures and administrative techniques in view of its limited resources, and the public interest in seeing that scarce broadcast facilities go to the best qualified applicant." *Id.*, at 171. In affirming the Board's dismissal of a previous applicant for failure to comply with various procedural deadlines, the Commission stated:

> We agree with the Board that prosecution of an application means timely compliance with procedural and substantive rules, including ALJs' orders. *Vue - Metrics, Inc.*, 69 F.C.C. 2d 1049, 1058 (1978)

* * *

> Furthermore, we have also, among other things, made significant changes in the way the Commission conducts its comparative hearing proceedings so as to achieve more efficiency and an expeditious point of finality. *See, Report and Order*, 72 FCC 2d 202 (1979). In doing so, we determined that the effective and expeditious dispatch of the Commission's business is, in itself, an integral part of the public interest. Consistent with this determination that new service should be provided to the public in the most efficient, expeditious manner possible, ALJs must be given broad discretion to regulate the course of multiparty comparative hearings. Here, the ruling in question is clearly within the bounds of the authority delegated to ALJs as well as fully in accord with our current policies. In view of the foregoing and the specific facts concerning [the applicant's] failure to respond in any way to the motion seeking dismissal of its application following a series of other deficiencies, we find no error in the ruling below.

Hillebrand Broadcasting, Inc., 1 FCC Rcd 419 (1986) (footnote omitted), *appeal dismissed mem. sub nom. Punta Ybel Communications, Ltd., v. F.C.C.*, No. 86-1670 (D.C. Cir., Feb. 29, 1988).

7. We believe that the determinative factors enumerated in *Comuni-Centre* have been met. First, Media does not claim that withdrawal of former counsel was unexpected, or explain the absence of its exhibits on the specified exchange date. Second, Media does not explain its failure to immediately request an extension of time, particularly since one of its principals, Theresa L. Watson, who now represents Media, is a Washington, D. C. attorney. Third, the ALJ was next faced with the unexplained failure of a Media principal (Stith) to appear for deposition and to inform the other parties in advance. Given Media's cu-

mulative failures to timely exchange evidence and provide a principal-deponent for deposition, and the ensuing disruption and prejudice to the other parties, we cannot say that the ALJ abused the discretion vested in him under *Hillebrand, supra*. In the absence of a perceived abuse of discretion where an applicant is dismissed for repeated failures to comply with procedural orders and the hearing schedule, the Board has affirmed such dismissals. *See Mark A. Perry*, 4 FCC Rcd 6500, 6502-03 (Rev. Bd. 1989); *William E. Benns, IV*, FCC 91R-36, released May 3, 1991 (appeal denied where applicant did not comply with discovery orders); *Josie FM Limited Partnership*, 6 FCC Rcd 891 (Rev. Bd. 1991) (failure to produce documents and witnesses); *Lorraine Walker Arms*, 5 FCC Rcd 3426 (Rev. Bd. 1990), *rev. denied*, 5 FCC Rcd 7013 (1990) (failure to produce witness at hearing); *Carroll, Carroll & Rowland*, 4 FCC Rcd 7149 (Rev. Bd. 1989), *rev. denied*, 5 FCC Rcd 2430 (1990) (failure to go forward with discovery); *Carol Sue Bowen*, 6 FCC Rcd 10, 12 (Rev. Bd. 1991) (applicant dismissed for failure to produce documents).

8. ACCORDINGLY, IT IS ORDERED, That the "Appeal of Presiding Officer's Ruling" filed May 29, 1991 by Chesapeake Media Communications Corp. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTE

[1] In its improperly captioned Appeal, Media did not designate the Board (or any other authority) as the recipient forum. The document was misdirected to the ALJ, and initially was informally referred to the Board.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-467

In the Matter of

Amendment of Section 73.202(b),	RM-7443
Table of Allotments,	RM-7596
FM Broadcast Stations.	
(Gualala, California)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 10, 1991; Released: June 19, 1991

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 5 FCC Rcd 6268 (1990), issued in response to a petition for rule making filed on behalf of Dr. Gerhard Hanneman ("petitioner"), proposing the allotment of FM Channel 246B1 to Gualala, California, as that community's first local aural transmission service. Petitioner filed supporting comments. CBS, Inc. ("CBS"), licensee of Station KRQR(FM), Channel 247B, San Francisco, California, filed a counterproposal. [1] Petitioner filed reply comments. No other comments were received.

2. CBS requests the allotment of Channel 263B1, rather than Channel 246B1, to Gualala to prevent interference to the signal quality of its Station KRQR(FM) in Sonoma County. [2] In further support of its counterproposal CBS advises that Channel 263B1 can be allotted to Gualala without a site restriction, whereas proposed Channel 247B1 would require a station broadcasting thereon to operate from a restricted site located at least 9.1 kilometers (5.7 miles) northwest of the community. CBS urges that not only would the allotment of Channel 263B1 to Gualala remove the potential for interference to service provided by other FM stations serving Sonoma County, but it would also benefit the public by resulting in a net gain of FM service to the county residents.

3. Petitioner responded favorably to CBS's counterproposal, agreeing that the allotment of Channel 263B1 would better serve the public interest, and stated his intention to apply for Channel 263B1, if allotted to the community.

4. In consideration of the above, we believe the public interest would be served by allotting Channel 263B1 to Gualala as that community's first local aural transmission service. Channel 263B1 can be allotted to Gualala without the imposition of a site restriction. [3]

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 5, 1991,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED to include the community listed below, as follows:

City	Channel No.
Gualala, California	263B1

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. The window period for filing applications on Channel 263B1 at Gualala, California, will open on **August 6, 1991,** and close on **September 5, 1991.**

8. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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[1] Public Notice of the counterproposal (RM-7596) was given January 14, 1991 (Report No. 1833).

[2] From the restricted site required for Channel 246B1 at Gualala, the distance to the licensed site of Station KRQR(FM), Channel 247B, San Francisco, is 145 kilometers. A separation of 145 kilometers is required between first adjacent Class B and B1 channels. Ordinarily, the nature and extent of protection from interference afforded FM broadcast stations is limited to the protection that results from the minimum spacing requirements and maximum power and antenna height limitations prescribed in the Rules. In this instance, the mimimum distance separation requirements of proposed Channel 246B1 to Station KRQR(FM) are met. Station KRQR(FM) operates with grandfathered superpower facilities of 82 kW at a height above average terrain of 335 meters, instead of the prescribed maximum facilities of 50 kW at 150 meters (492 feet) for a Class B station, as set forth in Section 73.211(b) of the Commission's Rules. Section 73.207 of the Rules, in essence, protects the 54 dBu contour of a Class B station which extends a distance of 65.1 kilometers. However, Station KRQR(FM), operating with facilities in excess of the prescribed maximum, produces a 54 dBu signal at 87 kilometers, thereby exceeding the normally protected radius. Since Station KRQR(FM) is not entitled to protection beyond that provided by the Rules, we wish to clarify that CBS's proposal is being entertained in the context of this proceeding due solely to the lack of an objection by the petitioner or any other interested party, and the fact that the public interest is better served by allotting an unrestricted channel to Gualala. Our action should not be construed as a willingness to provide any additional protection to Station KRQR(FM).

[3] Coordinates used for Channel 263B1 at Gualala are 38-46-00 and 123-31-42.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-307

In the Matter of

Amendment of Section 73.606(b), RM-6301
Table of Allotments,
TV Broadcast Stations.
(Modesto and Ceres, California)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 10, 1991; Released: June 19, 1991

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 4 FCC Rcd 5420 (1989), issued at the request of Bet Nahrain, Inc. ("petitioner"), proposing the deletion of noncommercial educational television Channel *23 from Modesto, California, and its reallotment to Ceres, California, as that community's first local television service. Petitioner filed supporting comments in response to the *Notice*. The Roman Catholic Diocese of Stockton ("Diocese") filed opposing comments. No other comments were received.

2. The *Notice* advised potential applicants that there is a temporary freeze on the filing of construction permit applications for vacant channels where the community is located within the prohibited distance to certain metropolitan areas. [1] Modesto and Ceres each fall within the "freeze" parameters to the San Francisco and Sacramento-Stockton markets. However, Ceres is further removed from those cities than the current allotment of Channel *23 at Modesto. Thus, we found that a waiver of the freeze for allotment purposes was warranted under those circumstances.

3. Moreover, the *Notice* advised that although the proposed reallotment of Channel *23 from Modesto to Ceres could be accomplished in conformity with the technical requirements of the Commission's Rules, Channel *23 is closely spaced to the proposed use of Channel 24 in San Francisco for land mobile service. [2] The distance between Ceres and San Francisco is 81 miles, whereas the adjacent channel usage of Channel *23 at Ceres requires a separation of 140 miles. Therefore, we stated that if Channel 24 is ultimately allotted to San Francisco for use by the private land mobile service, the quality of reception on Channel *23 at Ceres may be affected.

4. The Diocese objects to the proposed reallotment of Channel *23 to Ceres, alleging that no benefit would result since Modesto and Ceres are adjacent to one another. Rather, the Diocese urges the Commission to retain Channel *23 at Modesto, and advises that it is interested in applying for the frequency to operate a full power educational television facility in Modesto.

5. Petitioner advises that UHF television Channel 19, licensed to Station KCSO(TV) at Modesto, telecasts predominately religious programming. Consequently, petitioner expressed its concern that if Channel *23 remains in Modesto, the Diocese may use it as an additional outlet for religious programming, should it become the successful licensee, rather than presenting a diversity of programming to the community. [3] Moreover, petitioner alleges that since Ceres is located further from the affected freeze areas, reception on Channel *23 at Ceres should be less affected by Channel 24, if that channel is ultimately allotted for land mobile service in San Francisco. Petitioner states that its organization is committed to apply for Channel *23 if allotted to Ceres, and, if authorized, to build a station promptly for the presentation of educational programming.

6. Initially, we note that in adopting the Table, the Commission set forth priorities governing the allotment of television channels. [4] The provision of at least one local television broadcast station to each community was listed as a higher priority than providing additional services to a community. Additionally, the Commission stated that allotted channels, whether reserved or not, may be modified after a reasonable period if it appeared in the public interest to do so. [5] Channel *23 was allotted to Modesto in the *Fifth Report and Order* in Docket No. 14229, 2 FCC 2d 527 (1966), yet it remains fallow. Although the Diocese has come forward with an intention to apply for Channel *23 at Modesto, a thorough search of the Commission's records does not reveal that any such application was submitted to the Commission during the pendency of this proceeding. Thus, we cannot conclude that there is a *bona fide* interest in retaining Channel *23 at that community.

7. In consideration of the fact that Channel *23 has lain fallow at Modesto for approximately twenty-four years, we believe that the possible activation of the channel there at some future date must be weighed against the public interest benefits of a prospective first local television service at Ceres, which would fulfill the Commission's allotment objectives, and for which there is a present demand. Moreover, we believe that the Commission's policy to provide a regulatory atmosphere conducive to the encouragement and preservation of the unique and valuable service offered to the public by noncommercial educational facilities would be maintained since Channel *23 will remain reserved for such specialized use.

8. Based on the above, we believe the public interest would be served by reallotting Channel *23 from Modesto to Ceres since it would provide a first local television service to that community. Channel *23 can be allotted to

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[1] *See Notice of Inquiry*, 2 FCC Rcd 5125 (1987) and *Order*, 52 FR 28346 (1987).

[2] *See* Gen. Docket 85-172, *Further Sharing of the UHF Television Band by Private Land Mobile Services*, 50 FR 25587, June 20, 1985.

[3] Our decision in this proceeding will not be affected by speculation as to the programming that may be broadcast by the ultimate licensee for Channel *23.

[4] *See Sixth Report and Order*, 41 FCC 148, 167 (1952).

[5] *See Sixth Report, supra*, at 161.

Ceres consistent with the minimum distance separation requirements of Sections 73.610 and 73.698 of the Commission's Rules. [6]

9. As announced previously, the Commission has imposed a temporary freeze on television allotments or applications therefor, in certain metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting. Although Ceres is situated within the zones encompassing San Francisco and Sacramento-Stockton, two of the markets affected by the freeze, the Commission indicated that it will consider waiver requests on a case-by-case basis, for applications for noncommercial educational channels, or for applicants which provide compelling reasons why this freeze should not apply to their particular situation. Potential applicants must seek a waiver of the freeze. *See Order, supra*. We note that, depending on the decision ultimately reached in General Docket 85-172, *supra*, the quality of reception on Channel *23 at Ceres may be affected by the proposed use of Channel 24 for private land mobile service in San Francisco. However, since Ceres is 2.9 miles (4.6 kilometers) further away from San Francisco than Modesto, we believe that the quality of reception may be less affected if Channel *23 operates in Ceres.

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 5, 1991,** the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

City	Channel No.
Ceres, California	*23+
Modesto, California	19-

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[6] Coordinates for this allotment are 37-35-24 and 120-57-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

Application for Review of

Jones Eastern of the Outer Banks, Inc.
Licensee, Radio Station WRSF(FM)
Columbia, North Carolina

MEMORANDUM OPINION AND ORDER

Adopted: June 5, 1991; Released: June 19, 1991

By the Commission:

1. The Commission has under consideration an Application for Review of the Mass Media Bureau's decision finding Jones Eastern of the Outer Banks, Inc. ("Jones Eastern"), licensee of radio station WRSF(FM), Columbia, North Carolina, in violation of the Commission's main studio rule, and directing the licensee to undertake steps to ensure that the station's Columbia facility complies with Section 73.1125 of the Commission's Rules.

2. In 1987, Jones Eastern requested a modification of its facilities to relocate its main studio 51 miles from its community of license and outside the station's principal community contour to the site of its auxiliary studio in Nags Head, North Carolina. The Mass Media Bureau denied Jones Eastern's modification request for failure to show that granting a modification under Section 73.1125(b)(2) would serve the public interest better than adherence to the main studio rule. Subsequently, the Commission received a complaint alleging that despite the Bureau's denial of its modification request, WRSF was operating its main studio in Nags Head, in violation of Section 73.1125(a).

3. Pursuant to the complaint, the Bureau requested Jones Eastern to submit information as to whether WRSF's Columbia studio had the capability to operate as a main studio. The Bureau requested specific information regarding the production and transmission equipment maintained in fully operative condition at the studio, and the job titles, job descriptions and weekly hours of all Columbia personnel. Jones Eastern responded with a list of all equipment that is available for transmission and production at any time. Jones Eastern also responded that the station has one full-time office manager who works at the studio weekdays from 8 a.m. to 5 p.m. According to Jones Eastern, the office manager's duties include handling phone calls from Columbia residents, and conducting a one-time telephone survey of 125 residents to ascertain community needs and issues. According to Jones Eastern, two other full-time station employees, a business manager and an account executive who are Columbia residents, "spend time" at the studio.

4. On October 27, 1989, by letter, the Bureau ruled that WRSF's Columbia facility did not constitute a main studio under Section 73.1125(a), as the licensee did not maintain a "meaningful management and staff presence" at that location, as required by the Commission in *Main Studio and Program Origination Rules (Clarification)*, 3 FCC Rcd 5024 (1988). In its letter, the Bureau required WRSF to take steps to assure a meaningful management and staff presence at the Columbia facility, and to submit a report outlining its progress in that area within 30 days.

5. In lieu of a progress report, Jones Eastern now requests that the Commission review the Bureau's determination that its facility is not in compliance with Section 73.1125(a). Jones Eastern reiterates its argument that its staff person is supervised regularly by the two management personnel, and that all three personnel are accessible to Columbia residents at all times and take an active role in communicating with local residents and community leaders to ascertain Columbia's needs and interests. Jones Eastern argues again that its staffing constitutes a "meaningful staff and management presence" because its ascertainment efforts and accessibility to residents of the community achieve the Commission's objectives in ensuring that stations meet their community service requirements.

6. In support of its position, Jones Eastern again points out that it has a full-time office manager at its Columbia studio who recently participated in conducting a survey of 125 Columbia residents (by speaking personally to 90-100 of those residents) to obtain information for the production of a WRSF public affairs program. (Petitioner has appended a representative sample of the station's questionnaires and its 1989 quarterly/issues programs lists). Jones Eastern clarifies that its business manager spends four unspecified hours per week at the Columbia studio, meeting twice weekly with the office manager to discuss issues of concern to local residents, makes himself available to local residents and community leaders, participates in local civic activities and reports to the general manager about those activities. Jones Eastern also clarifies that its general manager spends two unspecified hours per week at the Columbia facility. During those two hours, the licensee asserts that the general manager makes himself available to Columbia residents and community leaders and converses with those people about local civic activities and issues of concern. According to the licensee, the station's senior account executive also reports to station management on activities in Columbia. Jones Eastern contends that the time that the business manager, general manager, and senior account executive spend at the station, although undefined, constitute a "regular, ongoing management presence." Jones Eastern requests that, in the event the Commission affirms the Bureau's determination, the Commission issue a declaratory ruling delineating the precise number of staff persons and work hours that make up a "meaningful management and staff presence" at the main studio.

7. When the Commission decided to relax the location requirement of the main studio rule to allow a licensee to locate its main studio outside the community of license but within the station's principal community contour, we emphasized the importance of maintaining a local responsive presence in the community. In *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3218 (1987), we stated that "exposure to daily community activities and other local media of communications helps stations identify community needs and interests, which is necessary to operate in today's competitive marketplace and to meet our community service requirements." In our 1988 clarification of the main studio requirements, we required a

"meaningful management and staff presence" to fulfill this function. *Main Studio and Program Origination Rules (Clarification)*, 3 FCC Rcd 5024, 5026 (1988).

8. Despite the recent relaxation of the rule, the history of the main studio rule reveals that the Commission has been consistently concerned with the adequacy of a licensee's staffing at the main studio.[1] For example, in a number of cases, the Commission has designated for hearing issues as to the adequacy of a licensee's staffing at the main studio. *See, e.g., Mace Broadcasting Co.*, 13 RR 2d 753, 755-56 (1968); *Clarkston Broadcasters*, 12 RR 2d 1203, 1207-08 (1968); *Sunset Broadcasting Corporation*, 5 FCC 2d 321, 323 (1966); *Pepper Schultz*, 58 RR 2d 434 (Rev. Bd. 1985), *aff'd*, 5 FCC Rcd 3273 (1990), *aff'd by judgment sub nom. Pepper Schultz v. FCC*, No. 90-1318 (D.C. Cir. March 21, 1991); *United Broadcasting Co. (KBAY - FM)*, 58 FCC 2d 1346, 1357-58 (Rev. Bd. 1976). In *John H. Phipps Broadcasting Stations, Inc. (WCTV)*, 43 FCC 2d 1188 (1973), the Commission found a station in violation of the main studio rule because, in part, its auxiliary studio was staffed by 64 employees, while its "main studio" was staffed by only 12. In *Pappas Telecasting of the Carolinas (WHNS(TV))*, 104 FCC 2d 865, 874 (1986), the Commission required that a licensee provide a "meaningful and significant presence" in terms of staffing at its main studio.

9. In our 1988 clarification, we did not formulate a "bright line" test to define a "meaningful presence." We find, however, that a staffing situation like the one Jones Eastern proposes renders the Commission's concept of a main studio virtually meaningless. One full-time "office manager" who takes calls and once conducted a telephone survey does not suffice as the station's community liason without the consistent supervision of regular management personnel. We believe that a meaningful presence means more than one full-time clerical person, together with occasional oversight from two management personnel who apparently have no specific work schedule in Columbia but instead, work at the studio at irregular intervals, aggregating six hours per week. To the extent that Jones Eastern suggests that WRSF management's participation in civic affairs serves as the functional equivalent of meaningful management presence at the studio, that argument is irrelevant to the determination of a main studio violation. For this reason, we find that a main studio must, at a minimum, maintain full-time managerial and full-time staff personnel.[2]

10. Accordingly, IT IS ORDERED that, pursuant to Section 1.115(g) of the Commission's Rules, the Application for Review IS DENIED. [3] Jones Eastern is hereby ordered to take steps to assure compliance with Section 73.1125(a) by bringing its Columbia studio management and staff personnel up to a full-time level consistent with this opinion. It is further ordered that Jones Eastern shall submit a report outlining the steps taken in meeting those requirements within thirty (30) days of the release of this opinion.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] As to the studio equipment requirement, the licensee's previous submission to the Bureau indicated that its Columbia facility meets the necessary standards and capabilities.

[2] This is not to say that the same staff person and manager must be assigned full-time to the main studio. Rather, there must be management and staff presence on a full-time basis during normal business hours to be considered "meaningful."

[3] In light of the above disposition, we decline to issue a declaratory ruling under Section 1.2 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-164

In re Applications of

COOSA RADIO PARTNERSHIP (hereafter "CRP")	File No. BPH-900226MC
JEAN M. GRADICK (hereafter "Gradick")	File No. BPH-900226MD
SCREAMING EAGLE COMMUNICATIONS, INC. (hereafter "Eagle")	File No. BPH-900226ME

For Construction Permit
for a New FM Station on
Channel 237A (95.3 MHz)
in Coosa, Georgia

HEARING DESIGNATION ORDER

Adopted: June 7, 1991; Released: June 24, 1991

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. *CRP.* CRP proposes to sidemount its antenna on the existing WATV tower. Our engineering study indicates that this proposal may significantly exceed the ANSI guidelines for human exposure to radio frequency (RF) radiation as outlined in OST Bulletin No. 65 (October 1985). Consequently, we are concerned that CRP may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307 states that an EA must be prepared if the proposed operation would cause exposure to workers or the general public to levels of RF radiation exceeding specific standards. Since CRP's proposal may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, it will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. This study must include the effects of all nearby radiation sources. In this regard, if the site is presently fenced in compliance with the guidelines, CRP is required to so state and give the distance from the base of the tower to the fence. Accordingly, CRP will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of CRP's Environmental Assessment, that CRP's proposal will not have a significant impact upon the quality of the human environment, the contingent environment issue shall be deleted, and the Presiding Judge shall thereafter not consider the environmental effects of the proposal. See Section 1.1308(d) of the Commission's Rules.

3. CRP and Gradick petitioned for leave to amend their applications on October 17 and July 30, 1990 repectively. The accompanying amendments were filed after June 14, 1990, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to CRP in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

[1] An application submitted by T. C. Monte, Inc. ("Monte") (File No. BPH-900226MB) was dismissed April 27, 1990. On May 31, 1990, Monte filed a petition for reconsideration of the action dismissing its application. That petition will be disposed of in a separate proceeding.

6. IT IS FURTHER ORDERED, That in accordance with paragraph 2 hereinabove, CRP shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

7. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by CRP and by Gradick ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extend indicated herein.

8. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

9. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-166

In re Applications of

STEPHEN D. TARKENTON (hereafter "Tarkenton") File No. BPH-900416MI

DEBBIE R. HART (hereafter "HART") File No. BPH-900416MJ

GRAY COMMUNICATIONS, INC. (hereafter "Gray") File No. BPH-900416MK

For Construction Permit
for a New FM Station on
Channel 243A in Gray, Georgia

HEARING DESIGNATION ORDER

Adopted: June 7, 1991; Released: June 24, 1991

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Hart is an employee of Stations WPGA(AM) and WPGA(FM) in Perry, Georgia. She does not state in what capacity she is employed. Perry and Gray are in close enough proximity that her employment at WPGA(FM) and her ownership of the instant facility could violate the Commission's cross-interest policy. However, Hart has indicated her intent to terminate her relationship with stations WPGA(AM) and WPGA(FM) in the event of grant of the referenced application. Accordingly, in the event of grant of Hart's application, she will be required to sever all connections with Stations WPGA(AM) and WPGA(FM) prior to commencement of program test authority.

3. The Commission requires that if there are five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although Gray has filed such statement, it is deficient. Gray has not listed any women's groups as recruitment sources. Accordingly, Gray will be required to file an amended EEO program with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

4. Tarkenton petitioned for leave to amend his application on November 28, 1990. The accompanying amendment was filed after August 21, 1990, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

5. Section II, Item 4 (new form) of FCC Form 301 (June 1989) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Hart has not completed Item 6 correctly. Hart's application gives a post office box number as the residence address for her. Accordingly, Hart must submit an amendment which gives all the information required by Section II, Item 6 to the presiding Administration Law Judge after this Order is released.

6. Data submitted by the applicants indicate there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Information before the Commission indicates that Gray was organized and is affiliated with Sonrise Management Services ("Sonrise"). Sonrise has been the subject of "real party-in-interest" issues added by presiding Administrative Law Judges in a number of mutually exclusive proceedings. For example, issues concerning Sonrise have been designated in each of the following proceedings:

City/State	Docket No.
Solona, Florida	87-464
Rockledge, Florida	87-556
Silver Springs, Florida	88-119
East Ridge, Tennessee	88-122
Des Moines, Iowa	88-238
Nags Head, North Carolina	88-277
Tyler, Texas	88-280
Raleigh, North Carolina	88-306
Sedona, Arizona	88-335
Mableton, Georgia	88-400
Evansville, Indiana	88-403
Swanton, Ohio	88-432
Atlantic City, New Jersey	88-433

Identical issues were specified in each of these proceedings: whether or not Sonrise was a real party-in-interest in the subject applicant, whether or not the applicant's organizational structure was a sham, and the effect thereof on the applicant's qualifications to be a Commission licensee. In each of the proceedings listed above, the Sonrise-affiliated applicant had dismissed its application rather than resolve these issues. These unresolved issues call into question Gray's qualifications to be a Commission licensee. Therefore, such issues will be specified and tried against Gray in this proceeding.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of Gray.

2. To determine whether Gray's organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 through 2 above, whether Gray possesses the basic qualifications to be a licensee of the facilities sought herein.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That, in the event of grant of Hart's application, Hart will be ordered to divest herself of all interests in and sever all connections with Station WPGA(FM), Perry, Georgia, prior to the commencement of program test authority.

11. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Gray shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

12. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Tarkenton IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

13. IT IS FURTHER ORDERED, That Hart shall submit an amendment which contains the information required by Section II, Item 6 (new form) of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

14. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

16. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

KKTV, INC.	CSR-3381
SANGRE DE CRISTO COMMUNICATIONS CORPORATION	CSR-3382
PIKES PEAK BROADCASTING COMPANY	CSR-3402

Petitions for Declaratory Ruling

MEMORANDUM OPINION AND ORDER

Adopted: June 4, 1991; Released: June 21, 1991

By the Commission:

INTRODUCTION

1. On April 4, 1990, Pikes Peak Broadcasting Company (hereinafter "KRDO-TV"), licensee of Station KRDO-TV (ABC, Channel 13), Colorado Springs, Colorado, filed a petition for special relief (CSR-3402), seeking a declaratory ruling that KRDO-TV is entitled to syndicated program exclusivity protection in Colorado Springs, Colorado, against stations from Denver. Similar petitions were filed on April 5, 1990 (CSR-3381) by KKTV, Inc. (hereinafter "KKTV"), licensee of Station KKTV (CBS, Channel 11), Colorado Springs, Colorado, and on April 11, 1990 (CSR-3382) by Sangre de Cristo Communications Corporation (hereinafter "KOAA-TV"), licensee of Station KOAA-TV (NBC, Channel 5), Pueblo, Colorado. The petitions are opposed by Colorado Springs Cablevision, Inc. (hereinafter "Cablevision"),[1] operator of a cable television system serving Colorado Springs, Colorado, and all petitioners have replied.

2. Colorado Springs lies within the Colorado Springs specified zone of the Colorado Springs-Pueblo, Colorado smaller television market. Several of the television broadcast stations licensed to Denver -- including Stations KWGN-TV (Ind., Channel 2), KCNC-TV (NBC, Channel 4), KMGH-TV (CBS, Channel 7), and KUSA-TV (ABC, Channel 9) -- place predicted Grade B contours over all or part of Colorado Springs. Accordingly, pursuant to §76.156(a) of the Commission's Rules, syndicated programming carried on these stations would be exempt from deletion in Colorado Springs, and Cablevision does not delete this programming. Petitioners argue, however, that an engineering study performed pursuant to §73.686(c) of the Rules rebuts the presumption of the rules that the Denver stations should be exempt from deletion. Accordingly, petitioners argue that §76.156(a) of the Rules should be waived and that they should be afforded syndicated exclusivity protection against the Denver stations.[2]

SUMMARY OF PLEADINGS

3. In support of their petitions for special relief, petitioners argue that while the Denver stations in question place predicted Grade B contours over all or portions of Colorado Springs, a study by the engineering consulting firm du Treil, Lundin & Rackley, Inc. (hereinafter "the du Treil study") reveals that in fact none of the Denver stations -- KWGN-TV, KCNC-TV, KMGH-TV, and KUSA-TV -- places an actual Grade B contour over Colorado Springs. Accordingly, claim petitioners, they are each entitled to syndicated program exclusivity protection against these Denver stations in the Colorado Springs-Pueblo market. Commission precedent supports such a determination, contend petitioners, citing *Meadville Master Antenna, Inc.*, 48 FCC 2d 147 (1974), *review denied*, 52 FCC 2d 1282 (1975), *aff'd*, 535 F. 2d 214 (3d Cir. 1976), and also *Staunton Video Corp.*, 52 FCC 2d 602 (1975). Petitioners further assert that their position is supported by language in the report adopting the new syndicated exclusivity rules, grounding the exceptions to the rules in a broadcaster's lack of a "reasonable expectation of exclusivity. . . ." *Report and Order in Gen. Docket No. 87-24*, 3 FCC Rcd 5299, 5315 (1988), *recon. denied in pertinent part*, 4 FCC Rcd 2711 (1989), *aff'd sub nom. United Video, Inc. v. FCC*, 890 F. 2d 1173 (DC Cir. 1989). According to petitioners, were the Denver stations actually to place Grade B contours over Colorado Springs, then petitioners would have no reasonable expectation of exclusivity in the community. However, because the du Treil study shows that the Denver stations in fact do not place actual Grade B contours over Colorado Springs, the rationale of the Grade B contour exception of §76.156(a) of the Rules does not apply, and petitioners do have a reasonable expectation of exclusivity in Colorado Springs.

4. In opposition to petitioners, Cablevision contends that the du Treil study submitted by petitioners is irrelevant to the question in issue: whether or not the Grade B contours of the Denver stations encompass Colorado Springs in whole *or in part*.[3] By specifically exempting signals that encompass a community "in whole or in part" from syndicated exclusivity deletions, asserts Cablevision, the Commission stated its clear intent not to black out programming that is available off-the-air in a community. Indeed, notes Cablevision, the du Treil study

[1] On May 1, 1990, Cablevision was granted an extension of time, to May 17, 1990, to file a consolidated opposition to all three petitions. *Pikes Peak Broadcasting Company* (letter dated May 1, 1990). In view of the foregoing, and because the pleadings filed in all these proceedings address similar issues and affect the same parties, we are consolidating these proceedings. *Teleprompter Corporation*, 91 FCC 2d 146, 148 (1982).

[2] Although §76.156(a) of the Rules also provides an exemption for signals that are significantly viewed, none of the Denver signals is significantly viewed in Colorado Springs.

[3] Cablevision also maintains that the du Treil study is flawed in several respects: (1) the descriptions of the test sites are incomplete; (2) the map is insufficiently detailed; (3) test sites were chosen away from grid points to avoid good receiving paths; (4) the number of test locations is insufficient to meet the requirement of §73.686(c)(1)(ii) of the Rules; and (5) the equipment was last calibrated on June 23, 1988.

shows that the Denver stations provide actual Grade B service at a number of locations in Colorado Springs. Citing *Staunton Video Corp., supra,* Cablevision maintains that under a similar set of rules, the Commission refused to grant a waiver where only a few areas within the city of Staunton received Grade B service. Therefore, Cablevision argues that the instant petitions must be denied, preserving the integrity of the exception of §76.156(a) of the Rules.[4] The Denver signals have been available to cable subscribers in Colorado Springs for nearly twenty years, states Cablevision, and its subscribers, who are already experiencing other syndicated exclusivity blackouts, as well as network program nonduplication blackouts, should not have their viewing habits further disrupted. Finally, Cablevision maintains that grant of petitioners' requests would violate the first amendment, "arbitrarily restrict[ing] programming currently available to the viewing public."

5. In reply to Cablevision, petitioners argue that a determination of signal strength over a community must be based upon a community-wide, grid-based field strength analysis, citing *Meadville Master Antenna, Inc., supra,* and also the Commission's Rules and policies concerning cable rate regulations. *See* 47 C.F.R. §76.33. In the case of each signal measured -- KWGN-TV, KCNC-TV, KMGH-TV, and KUSA-TV -- petitioners note that the du Treil study shows the median signal strengths to be below a Grade B level, exceeding that level at only a few random points out of the 56 points measured. *Staunton Video Corp., supra,* cited by Cablevision, is inapposite, petitioners contend, as it involved a pocket of poor reception arguably within the Grade B contour in question, and radial measurements rather than the community-wide grid measurements taken pursuant to §73.686(c) of the Rules. Petitioners maintain that Cablevision's public interest and first amendment arguments are insufficiently weighty, and note that a constitutional challenge to the syndicated exclusivity rules was rejected in *United Video, Inc. v. FCC, supra.* Grant of petitioners' requests, they urge, would be consistent with the purpose of the rules.[5]

DISCUSSION

6. In adopting our current syndicated exclusivity rules, we stated that:

> where a cable system's viewers can receive, off the air, the signals of two or more broadcast stations . . . neither station will be permitted to invoke syndicated exclusivity rights against the programming of the other . . . . Thus, a broadcaster cannot contract for exclusive rights when it has no reasonable expectation of exclusivity in any case . . . . [W]hen a cable community unit falls, in whole or in part, within the Grade B contour of a broadcast signal, ... the cable community unit cannot be required to delete the signal.

Gen. Docket No. 87-24, 3 FCC Rcd at 5315. Our syndicated exclusivity rules exempt from their regulatory scope not merely communities which are entirely encompassed by the Grade B contours of the signals in question, but also communities which are merely covered in part by a given signal's Grade B contour. *Compare* 47 U.S.C. §76.156(a) *with* 47 U.S.C. §76.33(a)(2). In the present case, the *predicted* Grade B contours of the stations in question -- KWGN-TV, KCNC-TV, KMGH-TV, and KUSA-TV -- encompass Colorado Springs in whole or in part. Therefore, §76.156(a) by its express terms exempts the Denver stations in question from syndicated exclusivity blackouts in Colorado Springs. The rationale for this provision of the rules is that signals should not be subject to deletion from cable systems under the syndicated exclusivity rules in those situations where the station requesting the protection of the rules has no expectation of exclusivity. The practical availability of a signal from another station carrying the same programming eliminates this expectation. As the Commission stated in adopting the rules, "a broadcaster cannot contract for exclusive rights when it has no reasonable expectation of exclusivity in any case." *Gen. Docket No. 87-24,* 3 FCC Rcd at 5315. The use of the Grade B contour standard reflects general expectations in this regard. Rules of general application, of course, cannot anticipate every situation that may arise. Consequently, the associated special relief process exists as a safety valve, to ensure that the rules are allowed to operate in accordance with their intended purposes. The question arises, therefore, in view of the information presented to us by petitioners, whether special relief from the rule exemption is warranted in the circumstances presented here.

7. We believe that a waiver is warranted in the instant proceeding. Colorado Springs lies at the edge of the predicted Grade B contour of each of the Denver stations in question, and is a core community of a separate market from that of KWGN-TV, KCNC-TV, KMGH-TV, and KUSA-TV. None of these stations is significantly viewed in Colorado Springs, and there is no information from any of these stations suggesting, in connection with the programming that they have acquired, that they have an expectation of over-the-air reception and audience in Colorado Springs. In analogous cases involving demonstration of signal availability, in the context of our television broadcast-cable television cross-ownership rules, the Commission has waived its rules regarding predicted Grade B encompassment when it has been shown by competent engineering evidence that the actual measured service falls significantly below the Grade B levels predicted to be available throughout the relevant area.[6] A careful review of the engineering data submitted per-

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[4] Cablevision also argues that denial is necessary in order to maintain a predictable standard in applying the exception of §76.156(a) of the Rules. That parties may seek a waiver of one of our rules does not undermine or change the rule's standard, but merely recognizes that in particular circumstances special relief may be warranted in the public interest.

[5] Petitioners also argue that the du Treil study is not flawed, that Cablevision's criticisms of it are incorrect or groundless, and that the equipment used was calibrated according to the manufacturer's recommendations. Petitioners submit a response from du Treil, Lundin & Rackley, Inc. to buttress their arguments. In addition, on August 3, 1990, Cablevision filed a supplemental letter commenting further on matters raised in petitioners' replies. KRDO-TV and KOAA-TV oppose this filing as unjustified and late-filed. Pursuant to §§1.65 and 76.7 of the Rules, we find Cablevision's filing acceptable and justified.

[6] *See Teleprompter Corporation, supra; NewChannels Corp.,* 55 FCC 2d 623 (1975).

suades us that is the case here. Of the 56 points measured in a grid across Colorado Springs, the du Treil study shows that both KWGN-TV and KUSA-TV meet or exceed the Grade B field strength level at only four points, KCNC-TV meets or exceeds the Grade B level at only six points, and KMGH-TV meets or exceeds the Grade B level at only nine points. These percentages are only 7.1 percent, 10.7 percent, and 16.1 percent, respectively.[7] These numbers are similar to the 9.3 percent and 12.5 percent figures found in the referenced analogous cases. In addition, the median signal strengths of the stations in Colorado Springs is only 34.0 dBu for KWGN-TV and only 35.7 dBu for KCNC-TV, well below the Grade B service level for those stations of 47 dBu; while the median strength of KMGH-TV is 46.5 dBu and that of KUSA-TV is 41.2 dBu, again well below the Grade B service level for those stations of 56 dBu. Again, these numbers are similar to the figures found in the referenced analogous cases. We find Cablevision's criticisms of the du Treil study to be unavailing. Cablevision has provided no substantiation for its claim that the du Treil study's results are flawed, or to rebut the actual measurements recorded. The study meets the requirements of §73.686(c) of the Rules. The site descriptions and map are sufficiently detailed, the sites are properly chosen and of a sufficient number, and the equipment used was calibrated according to the manufacturer's recommendations. Accordingly, we find, based on the showing submitted and the totality of circumstances involved, that petitioners properly have a reasonable expectation of exclusivity for the programming that they have contracted to broadcast in Colorado Springs. Thus, the public interest would be served by waiving the exemption of §76.156(a) of the Rules and holding that petitioners are entitled to syndicated exclusivity.

8. Turning to Cablevision's final arguments in opposition to petitioners, we note that we have previously stated, with regard to both our former and our current syndicated exclusivity rules, that by their very nature, enforcement of the rules often results in some disruption of established viewing habits, and that this, in itself, is not sufficient grounds for grant of a waiver of the rules. *Chambers Cable of Oregon, Inc.*, 5 FCC Rcd 5640, 5641 (1990); *Metro Cable Co.*, 64 FCC 2d 605 (1977). Addressing Cablevision's constitutional objections, we note that the appellate court has not found the limitations of our program exclusivity rules to be arbitrary, finding that, in upholding our rules, there is no first amendment right "to make commercial use of the copyrighted works of others." *United Video, Inc. v. FCC*, 890 F. 2d at 1191. Cablevision's desire to do so lacks constitutional protection.

9. In view of the foregoing, we find that grant of petitioners' requests is in the public interest.

10. Accordingly, IT IS ORDERED, That the petition for special relief (CSR-3402) filed April 4, 1990, by Pikes Peak Broadcasting Company IS GRANTED.

11. IT IS FURTHER ORDERED, That the petition for special relief (CSR-3381) filed April 15, 1990, by KKTV, Inc. IS GRANTED.

12. IT IS FURTHER ORDERED, That the petition for special relief (CSR-3382) filed April 11, 1990, by Sangre de Cristo Communications Corporation IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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[7] Nor has Cablevision submitted any evidence that the points fall in areas of unusually dense population. The du Treil study's maps, in fact, suggest that the contrary is true. Although petitioners and Cablevision each cite *Staunton Video Corp., supra*, to support their conflicting positions, the fact is that neither that case nor any other cited to us supports the proposition that a single test point -- or even a few test points -- measured at the appropriate level is sufficient to establish a lack of a reasonable expectation of exclusivity on the part of a local broadcaster. We agree with petitioners that *Staunton Video Corp., supra*, is inapposite to this analysis. A community grid analysis is more accurate, and is required in similar circumstances by other of our rules today. *See also Second Report and Order in MM Docket No. 84-1296*, 3 FCC Rcd 2617 (1988).

Although the 16.1 percent figure might not in and of itself be viewed as *de minimis*, we find that, when considered in light of the other factors present in this case--the fact that Colorado Springs is a separate designated television market, that it lies at the edge of the predicted Grade B contours of all the Denver stations, and that none of the Denver stations is significantly viewed in Colorado Springs--no different treatment of KMGH-TV would be warranted, and therefore the relief requested is appropriately granted.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-71

In re Applications of

CHEROKEE BROADCASTING CORPORATION — File No. BPH-880204MJ

RADIO CENTRE, INC. — File No. BPH-880209MF

For Construction Permit
for New FM Station, Channel 290A,
Centre, Alabama

MEMORANDUM OPINION AND ORDER

Adopted: June 17, 1991; Released: June 24, 1991

By the Review Board: MARINO (Chairman), BLUMENTHAL and ESBENSEN.

1. By *Initial Decision*, 6 FCC Rcd 1706 (1991) (I.D.), Administrative Law Judge Edward J. Kuhlmann determined that Cherokee Broadcasting Corporation (Cherokee) was the only qualified applicant remaining in this proceeding. As a result, Cherokee was awarded the construction permit at contest.

2. On May 24, 1991, Cherokee filed a "Statement in Support of Initial Decision and Contingent Exceptions." On April 19, 1991, Radio Centre, Inc. (RCI), filed a Motion for Extension of Time requesting that the Board extend the date for filing exceptions to May 24. This request was granted. However, RCI has not, in fact, filed any exceptions to the I.D. As a consequence, pursuant to 47 CFR § 1.276(f), RCI's application will be dismissed.

3. ACCORDINGLY, IT IS ORDERED, That the application of Radio Centre, Inc. (File No. BPH-880209MF), pursuant to 47 CFR § 1.276(f), IS DISMISSED; and,

4. IT IS FURTHER ORDERED, That the Statement in Support of Initial Decision and Contingent Exceptions filed by Cherokee Broadcasting Corporation on May 24, 1991, IS DISMISSED as moot; and,

5. IT IS FURTHER ORDERED, That the application of Cherokee Broadcasting Corporation (File No. BPH-880204MJ) for a new Class A FM facility at Centre, Alabama, IS GRANTED, and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

Eric T. Esbensen
Member, Review Board

MM Docket No. 88-306

In re Applications of

Henry R. Malloy, Jr. d/b/a REM MALLOY BROADCASTING	File No. BPH-860627MH
PEEBLES BROADCASTING COMPANY	File No. BPH-860603ME
James S. Lee and Donald L. Baker d/b/a INTERACTIVE MEDIA	File No. BPH-860707MS
FREE AIR CORPORATION	File No. BPH-860707NH
CLEAR CHANNEL COMMUNICATIONS, INC.	File No. BPH-860707NV
BERNARD DAWSON	File No. BPH-860707NW
SPECIAL MARKETS MEDIA, INC.	File No. BPH-860703MH

For Construction Permit for
New FM Station, Channel 275A,
Raleigh, North Carolina

ORDER

Adopted: June 17, 1991; Released: June 24, 1991

By the Review Board: MARINO (Chairman), BLUMENTHAL and ESBENSEN.

1. Before the Review Board is a "Motion for Voluntary Dismissal" filed June 3, 1991 by Clear Channel Communications, Inc. (Clear) indicating that it does not wish to prosecute its application further in this proceeding.

2. Pursuant to 47 CFR § 73.3525, Clear has submitted the declaration of a principal indicating that no consideration has been given or received to induce its dismissal, and that its application was not filed for the purposes of reaching a settlement agreement. All remaining parties are directed to file with the Board a similar declaration/affidavit within five (5) days of the release date of this *Order*.

3. ACCORDINGLY, IT IS ORDERED, that, pursuant to 47 CFR § 73.3568(c), the application of Clear Channel Communications, Inc. IS DISMISSED with prejudice.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-153

In re Applications of

SOUND BROADCASTING CO. File No. BPH-880126ML

MARGARET O. PESCATELLO File No. BPH-880126OE

For Construction Permit for
New FM Station, Channel 254A,
East Lyme, Connecticut

MEMORANDUM OPINION AND ORDER

Adopted: June 14, 1991; Released: June 24, 1991

By the Review Board: MARINO (Chairman), BLUMENTHAL and ESBENSEN.

1. The Review Board has before it: (a) an Appeal filed April 22, 1991, by Sound Broadcasting Co. (Sound II); and (b) an Opposition thereto filed May 6, 1991, by Margaret O. Pescatello (Pescatello). Sound II appeals the *Memorandum Opinion and Order*, FCC 91M-1022, released March 21, 1991, of Administrative Law Judge Joseph P. Gonzalez (ALJ), which dismissed its application, granted Pescatello's application for a new FM station at East Lyme, Connecticut, and terminated this proceeding. As explained herein, we grant Sound II's appeal and must remand this proceeding.

BACKGROUND

2. Shortly before the scheduled March 18, 1991 hearing, the entity now known as Sound II, but previously known as Sound Broadcasting Co. (Sound I), experienced a sudden and significant ownership change. Specifically, Sound I, a general partnership, lost its 50% general partner, Eugene Vincelette, leaving the two remaining 25% general partners, Nunzia DeDominicis and Laura DeDominicis, to prosecute the application. Sound I reported this "recent, abrupt and unforseeable" event to the ALJ on March 1, 1991, and concurrently sought to amend the application to substitute a new general partnership, Sound II for Sound I, with the two DeDominicis sisters as equal general partners. According to the attached declaration of Nunzia DeDominicis, her lawyer advised on February 20, 1991 that Vincelette was withdrawing without explanation from the Sound I partnership and that Vincelette would not sign any of the hearing exhibits previously prepared for the upcoming hearing. So, Sound II submitted new hearing exhibits signed by the DeDominicis sisters. Specifically, Nunzia DeDomenicis sponsored Exhibit 1, which described the organization of Sound II and addressed the applicant's auxiliary power proposal. Exhibits 2 and 3, signed by Nunzia and Laura DeDominicis, respectively, set forth their ownership/management integration proposals and other comparative qualitative attributes. Lastly, Sound II recertified the applicant's financial and transmitter site qualifications.

3. On March 7, 1991, Pescatello opposed Sound II's Petition for Leave to Amend, claiming that Sound II had failed to explain the circumstances underlying Vincelette's departure. It asserted that because its competitor's identity was now unclear, Sound II was basically unqualified to become a licensee. Pescatello further contended that Sound II might not be financially qualified, given the fact that Sound I's financing plan was based on a January 21, 1988 loan commitment letter from the Connecticut National Bank which required the personal guarantees of all three Sound I partners, including Eugene Vincelette.

4. However, the ALJ did not act on Sound II's amendment petition before the hearing on March 18, 1991. At the hearing, though, Sound II withdrew its new Exhibits 2 and 3, thus foregoing any comparative integration credit, but it still planned to offer its spartan Exhibit 1, which consisted of the following:

STRUCTURE OF SOUND BROADCASTING CO. II

Sound Broadcasting Co. II ("Sound II") is a general partnership organized under the laws of the State of Connecticut. The general partners and their respective partnership interests are as follows:

Nunzia DeDominicis: 50%

Laura DeDominicis: 50%

AUXILIARY POWER

Sound II will install emergency power generators at both the studio and transmitter sites of its East Lyme FM - station to insure that the station will be able to remain on the air in the event of a public utility power outage.

I hereby declare under penalty of perjury that the foregoing testimony is true and correct.

Neither of the DeDominicis sisters was present at the hearing because, according to their counsel, Exhibit 1, was "not an integration proposal. Tr. 13. At that point, Pescatello's counsel objected to the receipt of the aforesaid Exhibit I, citing due process grounds and claiming that he had "spent a considerable amount of time and effort preparing [for] cross examination . . . ." Tr. 14. The ALJ agreed with Pescatello's counsel and rejected Sound II's solitary written exhibit. In a later *Memorandum Opinion and Order*, FCC 91M-1022, released March 21, 1991, the ALJ memorialized his oral rulings and concluded that since Sound II had not demonstrated that Vincellette had voluntarily withdrawn from the partnership, Sound II's legal standing was in doubt. Accordingly, Sound II's March 1, 1991 amendment petition was denied, although the ALJ did accept the amendment "for reporting purposes," pursuant to 47 CFR § 1.65. As a consequence, the

application of Sound I was dismissed for failure to prosecute: and because only Pescatello's application remained, the ALJ awarded her the Construction Permit by default.

APPEAL

5. Turning to the instant appeal, Sound II advances two arguments. First, it claims that the ALJ erred in dismissing its application based on the rejection of its solitary hearing exhibit. Sound II contends that, in view of the last-minute withdrawal of Vincelette, the ALJ should have received its Exhibit 1 without a sponsoring witness because that exhibit did not entail any management integration credit. Sound II's second argument here is based on its disagreement with the ALJ's prehearing denial of an October 31, 1990 Motion to [1] *See Memorandum Opinion and Order*, FCC 91M-451, released February 7, 1991. In that motion, Sound II had sought a real-party-in-interest issue, claiming that its opponent's application is actually that of Anthony Pescatello, husband of Margaret Pescatello. Pescatello opposes the appeal, arguing that Sound II lacks standing because its ownership amendment was never accepted, technically leaving Sound I as the only other party to this proceeding. On the merits, Pescatello contends that she was "entitled as a matter of law to test the structure of Sound and its auxiliary power proposal" by cross-examining Nunzia DeDominicis. Regarding the real-party-in-interest argument, Pescatello argues that the ALJ correctly denied the motion.

DISCUSSION

6. *Ownership Amendment.* We first turn to the question of the ALJ's denial of Sound II's March 1, 1991 Petition for Leave to Amend. Sound II avers, without refutation, that Vincelette's departure was sudden and unexpected. It asserts that it acted promptly to reconstitute itself and to submit its ownership amendment. In opposing Sound II's amendment on March 7, 1991, Pescatello claimed that its opponent's ownership change "stems from a unilateral attempt by the 50% owner of Sound I to oust the other 50% owner." In the very next sentence, however, Pescatello conceded that she "has no knowledge of the relationship between the principals of Sound I . . . ."

7. In the face of Sound II's factually unchallenged representation, we are uncertain as to why the ALJ accepted the amendment "for reporting purposes only" instead of accepting it outright. As a matter of law, the mere withdrawal of a 50% partner from a general partnership does not constitute a "major change" requiring the dismissal of a application. *See* 47 § 73.3571(j)(2). Further, it appears that Sound II satisfied the requirements of 47 CFR § 73.3522(b) for its ownership amendment, by the "good cause" tests set forth in *Erwin O'Conner Broadcasting Co.*, 22 FCC 2d 140, 143 (Rev. Bd. 1970). Specifically, Sound II appears to have acted with due diligence, filing its amendment only nine days after learning of Vincelette's withdrawal. *Compare Palmetto Communications Company*, FCC 91R-35, released April 24, 1991 (withdrawal of 50% partner *never* disclosed by applicant). Next, we find no basis to discredit Sound II's unrefuted explanation regarding Vincelette's withdrawal, over Pescatello's unsupported speculation, that the Sound II ownership change was involuntary. In this regard, Nunzia DeDominicis swore in a February 26, 1991 declaration that Vincelette's departure "has taken Laura and me by complete surprise," given the fact of his participation "in the venture for more than two years, including participation in the recent depositions." Nor would acceptance of the amendment have unduly disrupted the hearing. Moreover, we detect no prejudice to Pescatello by acceptance of the amendment; in fact Sound II would have suffered a comparative *disadvantage* by the acceptance of the amendment, because Vincelette had proposed full-time integration. In the absence of evidence that undermined Sound II's claims, its amendment, it seems to us, should have been accepted.

8. *Dismissal of Application.* As a general rule, an ALJ has "broad discretion" to regulate the course of a hearing, including requiring the submission, in advance, of written direct case exhibits, and determining who will testify at the hearing regarding those exhibits. *See Cellular Mobile Systems of Pennsylvania, Inc. v. FCC*, 782 FCC 2d 182, 197-98 (D.C. Cir. 1985). Sound I apparently complied with this first procedureal requirement, by exchanging its original direct case exhibits on February 19, 1991, the date set by the ALJ.[2] Immediately thereafter, on February 20, the DeDominicis sisters learned of Vincellette's departure and promptly resubmitted new direct case exhibits on March 1, each proposing to be integrated on a full-time basis, and claiming various qualitative enhancements. Although Pescatello had noticed both sisters for cross-examination before the hearing,[3] Sound II, for whatever reason, essentially chose to abandon that particular facet of its case, resting instead upon its basic "Exhibit 1."

9. While a hearing exhibit ordinarily needs a sponsoring witness to be received into evidence, and an opposing party is entitled to cross-examine any timely-noticed witness at the ensuing hearing, the Commission has recognized the benefits of avoiding oral testimony and unnecessarily long hearings "where written submissions will serve just as well." *Adjudicatory Re-regulation Proposals*, 58 FCC 2d 865, 866 (1976). We believe this to be just such a case where, based on the simple two-sentence description of Sound II's amended ownership composition, as contained in the first part of its Exhibit 1, no compelling purpose would have been served by requiring Nunzia DeDominicis to be present at the hearing, at least as far as we know. In this regard, we seriously question Pescatello's curious claim that it had anticipated "considerable" cross-examination on the "auxiliary power" aspect of the exhibit. Indeed, Sound II had abandoned the heart of its own comparative case when it withdrew its integration proposal, and all of the derivative benefits that flow therefrom. As to the exhibit's claim of auxiliary power, we recognize that this also falls under the standard comparative issue, and thus the sponsoring witness' absence might justify the rejection of that portion of Exhibit 1. Under the circumstances, dismissal here seems uncommonly harsh. *Compare Comuni-Centre Broadcasting, Inc., v. FCC*, 856 F.2d 1551 (D.C. Cir. 1988).

10. *Enlargement of Issues.* Regarding the final *O'Conner* factor of additional hearing issues, we agree with Pescatello that the financial qualifications of Sound II are now called into question by the withdrawal of Vincelette. In this connection, the Connecticut National Bank, in a January 21, 1988 loan letter, required the personal guarantee of all three original Sound I partners. *See* Pescatello Opposition to Petition for Leave to Amend, Exh. 2. Sound II, so far as this record shows, yet relies on financing from that bank, and it is not shown that the bank's

commitment has survived the withdrawal of its erstwhile 50% principal. Therefore an appropriate issue must be added.

11. Turning to another matter, we also believe that there must be tried a real-party-in-interest issue against Pescatello. Preliminarily, although Pescatello argues that the ALJ's denial of the enlargement petition against her cannot be revisited at this time because there has been no Initial Decision, this elevates form over substance in the unusual circumstances of this case. The *Memorandum Opinion and Order* here under appeal is a final ruling which not only dismissed Sound II, but granted the Pescatello application and *terminated* the proceeding. Based on the information now before us, we agree with Sound II that material and substantial questions of fact were raised below, which require further hearing. It would therefore be a useless gesture to remand simply for the formal preparation of an Initial Decision, only to thereafter reverse and remand a *second* time for a real-party-in-interest issue against Pescatello. *See Rayne Broadcasting Co., Inc.*, 5 FCC Rcd 3350, 3352 (Rev. Bd. 1990) (real-party-in-interest issue added on Board's own motion; case remanded). *See generally also Pepper Schultz*, 4 FCC Rcd 6393 (Rev. Bd. 1989) (staffing and financial issues designated on Board's motion), *review denied*, 5 FCC Rcd 3273 (1990), *aff'd by judgment*, No. 90-1310 (D.C. Cir. March 21, 1991).

12. The legal test for determining whether such an issue should be added in this situation is well-established: whether a person who is not a principal has an ownership interest or is or will be in a position to control the operation of the station. Where family members are involved, however, somewhat greater proof is required to add the issue, because it is presumed that certain natural relationships among family members exist which may not suggest an unspoken interest in the applicant. *See, e.g., High Sierra Broadcasting, Inc.*, 96 FCC 423, 435 (Rev. Bd. 1983)(subsequent history omitted). Analyzing the facts of the instant case, that burden is met. It is undisputed by Margaret Pescatello, who is the putative applicant here, that she herself had nothing to do with this application before its filing in January 1988. Rather, her husband Anthony, the 80% owner of AM station WMMW, Meriden, Connecticut, learned of the availability of the East Lyme station, contacted *his* engineer to investigate the feasibility of filing an application, obtained a lease on a transmitter site, and, at the last minute (January 6, 1988), directed a second engineer to "file the East Lyme application in my wife's name . . . ." Sound Motion to Enlarge Issues, Exh. 3. Of at least equal significance are the evens subsequent to the filing of the application. Anthony Pescatello continued to be connected with this venture after January 1988 by negotiating an extension of the transmitter site lease in 1990. *See* Anthony Pescatello Dep., p.44. Aside from undertaking certain ministerial activities after January 1988, such as having taken the public file to the East Lyme library (Margaret Pescatello Deposition, p.60), and having "looked at" the transmitter site with her husband (*id.*, p.64), Margaret's Pescatello's most significant activity since then appears to have been "paying" the expenses connected with her application. However, we observe that of eleven such payment checks produced, four were written on an account owned by the Pescatello family's bail bonding business, with three of the four signed by son Jeff. And a fifth check was drawn on a joint Pescatello checking account.

13. The above-described set of facts is strikingly similar to that encountered in *Richard P. Bott, II*, 4 FCC Rcd 4924, 4929 (Rev. Bd. 1989), *review denied*, 5 FCC Rcd 2508 (Rev. Bd. 1990), where we concluded that the husband and wife "have functioned, and will likely function as a marital unit" in the operation of any station. Also on point is *Perry Television, Inc.*, 5 FCC Rcd 1667, 1668 (Rev. Bd. 1990), where the applicant was disqualified on real-party-in-interest grounds because, most importantly, the husbands performed the pre-application activities, and continued to be involved thereafter with their wives' application by participating in such activities as transmitter site negotiations. *See also N.E.O. Broadcasting Co.*, 103 FCC 2d 1031 (Rev. Bd. 1985), *review denied*, 1 FCC Rcd 380 (1987); *Rayne Broadcasting, supra*. Based on the foregoing, substantial questions of fact were certainly raised below as to whether Anthony Pescatello is a real-party-in-interest in his wife's application.[4]

14. ACCORDINGLY, IT IS ORDERED, That the March 1, 1991 Petition for Leave to Amend filed by Sound Broadcasting Co. IS GRANTED; the amendment IS ACCEPTED; and Sound Broadcasting Co. (II) IS SUBSTITUTED as the applicant in this proceeding; and

15. IT IS FURTHER ORDERED, That the appeal filed on April 22, 1991 by Sound Broadcasting Co. (II) IS GRANTED; and its application IS REINSTATED; and

16. IT IS FURTHER ORDERED, That this proceeding IS REMANDED to the presiding Administrative Law Judge for adduction of evidence on the following issues and the issuance of a Initial Decision, on the following issues:

(1) To determine whether Sound Broadcasting Co. (II) is financially qualified to construct and operate its proposed station.

(2) To determine whether Anthony Pescatello is a real-party-in-interest in the application of Margaret O. Pescatello and the effect thereof on the qualifications of that applicant to be a Commission licensee.

17. IT IS FURTHER ORDERED, That the burden of proceeding and the burden of proof on ISSUE 1 SHALL BE on Sound Broadcasting Co. (II); and

18. IT IS FURTHER ORDERED, That the burden of proceeding on Issue 2 SHALL Be on Sound Broadcasting Co. (II), and the burden of proof on Issue 2 SHALL be on Margaret O. Pescatello.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

[1] Sound I originally sought three issues against Pescatello -- a real-party-in-interest issue; an issue to determine "whether Pescatello has exercised adequate supervision and control over the preparation and filing of her application in a manner consistent with the responsibilities required of a proposed public trustee"; and a financial qualification/misrepresentation issue.

[2] Although these exhibits are not part of the record, neither party disputes Sound I's timely compliance with this requirement on February 19.

[3] Again, no record of this exists, but Sound II does not dispute it.

[4] The Commission is once again reviewing the difficult question of the conditions under which it will, or will not, consider married individuals to have no attributable interest in a spouse's media property. *See* Commission *Policies Regarding Spousal Attribution*, FCC 91-126, released May 8, 1991. Therein the Commission cited the Board's suggestion in *Richard P. Bott, II*:

> (i) that the spouse seeking to avoid attribution of the other's media interests demonstrate no prior interest or involvement by the other spouse in those media properties; (ii) that the applicant spouse show a history of individual and separate business interests; (iii) that the applicant spouse is the sole financial force behind the application; (iv) that the non-applicant spouse has not participated in the application process and will not participate in station affairs in any way; and (v) that the non-applicant spouse holds no current equity interest in the applicant entity, either active, passive, or through any form of joint ownership.

Very similar to the facts in *Bott*, the applicant's husband here, Anthony Pescatello, (1) holds an 80% interest in a nearby Connecticut broadcast station; and (2) has been very active in this Pescatello application. Moreover, it appears that his wife yet holds her 10% interest in that Meridan station, and has actively worked at that facility. There is, therefore, no "history of separate business interest and independent careers." *Spousal Attribution*, *supra*, at para. 12. While we recognize, as we did in *Bott*, that the criteria set out above goes primarily to media diversification questions, these criteria are also helpful when considering real-party-in-interest questions concerning husband and wife. Bott, 4 FCC Rcd at 4929-30.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-172

In the Matter of

Amendment of Section 73.202(b), RM-7726
Table of Allotments,
FM Broadcast Stations.
(Cushing, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 13, 1991; Released: June 21, 1991

Comment Date: August 12, 1991
Reply Comment Date: August 27, 1991

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Cavalier Broadcasting ("petitioner"), requesting the allotment of Channel 245A to Cushing, Texas, as the community's first local FM service. Petitioner states that it will apply for channel, if allotted.

2. Petitioner states that Cushing is listed in the Rand McNally Commercial Atlas, U.S. Atlas and the U.S. Census. [1] In addition, petitioner notes that Cushing is located in Nacodoches County, which has a population of 52,900 persons, and its proposed allotment would provide the entire county with an additional aural transmission service.

3. We believe the public interest would be served by proposing the allotment of Channel 245A to Cushing, Texas, since it could provide the community with its first local FM service. Channel 245A can be allotted to Cushing in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. [2]

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Cushing, Texas	--	245A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **August 12, 1991,** and reply comments on or before **August 27, 1991** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Shaun Maher, Esq.
Blair, Joyce & Silva
1825 K Street, N.W.
Washington, D.C. 20036
(Counsel to petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 632-6302. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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[1] According to the 1980 U.S. Census, Cushing is an incorporated community and has a population of 587 persons.
[2] The coordinates for Channel 245A at Cushing are North Latitude 31-48-42 and West Longitude 94-50-30.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-91

In the Matter of

Amendment of Section 73.606(b), RM-6659
Table of Allotments,
TV Broadcast Stations.
(Billings and Lewistown,
Montana)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 13, 1991; Released: June 21, 1991

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 3765 (1989), proposing the allotment of TV Channel 13 to Billings, Montana. The *Notice* was issued in response to a petition filed by Comanche Enterprises ("petitioner"). To accommodate petitioner's proposal, we proposed the deletion of then vacant Channel 13 at Lewistown, Montana. Petitioner filed comments restating its interest in the allotment at Billings. Petitioner and Big Horn Communications, Inc. ("Big Horn"), filed reply comments. [1]

2. Petitioner, in comments, continues to support the proposed channel reassignment. According to petitioner, the reallotment would assure the establishment of Montana's first independent television station and full utilization of a scarce VHF channel. Big Horn filed comments opposing the reallotment of TV Channel 13 from Lewistown to Billings. Big Horn provided a copy of its application for Channel 13 at Lewistown and indicates it will promptly construct and operate a television station in Lewistown. In reply comments, petitioner continues to support an additional television channel in Billings. According to petitioner, it has tried, unsuccessfully, for seven years to bring a new media voice to Billings. It believes the reallotment of Channel 13 is in the best interests of the public as Channel 13 will provide that new voice. [2]

3. Our *Notice* proposing the deletion of the channel at Lewistown was premised on a lack of interest since Channel 13 has not been used as a full service television station since it was assigned to the community. Channel 13 is currently used for secondary translator operation to rebroadcast the signal of a full service station in Billings. However, Big Horn Communications, Inc. has filed an application for Channel 13 at Lewistown which removes the basis for deletion of the channel. [3] It is Commission policy not to reallot a channel in which interest has been expressed, absent a sufficient reason, and we find that petitioner has failed to do so. *See, e.g., Montrose and Scranton, Pennsylvania*, 3 FCC Rcd 1061 (1988), *recon. denied*, 4 FCC Rcd 7799 (1989), *rev. denied*, 5 FCC Rcd 6305 (1990); *Snow Hill and Kinston, North Carolina*, 55 FCC 2d 769 (1975); *Red Oak, Iowa*, 46 FCC 2d 344 (1979); *Fond du Lac and Sheboygan, Wisconsin*, 55 RR 2d 592 (1984); and *Martin and Salyersville, Kentucky*, 50 RR 2d 502 (1981). Should it later appear, however, that there is undue delay in activating the channel in Lewistown, we would consider a further petition to remove the channel at Lewistown, Montana, to accommodate an additional service at Billings.

4. IT IS ORDERED, That the petition for rule making filed by Comanche Enterprises (RM-6659), IS DENIED.

5. IT IS FURTHER ORDERED, That the Secretary of the Commission, SHALL SEND BY CERTIFIED MAIL, Return Receipt Requested, a copy of this Order to the following applicant for Channel 13 at Lewistown:

Big Horn Communications, Inc.
P. O. Box 23309
Billings, Montana 59104

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] Big Horn filed late filed reply comments and a motion to accept reply comments, and Comanche file an opposition to the motion. Commission Rule 1.405(e) states that no additional pleadings may be filed unless specifically requested or authorized. We do not believe the public interest would be served by acceptance of Big Horn's additional comments. Therefore, we deny Big Horn's motion. Big Horn also filed comments advising the Commission of the death of its president and providing a new list of its officers. No prejudice will result from acceptance of this pleading.

[2] Petitioner also alleges deficiencies in Big Horn's application. These allegations will not be considered in this proceeding, as they are issues properly addressed, if timely raised, during the authorization process.

[3] The application for Channel 13 at Lewistown filed by Big Horn Communications, Inc. was put on Public Notice September 29, 1989, Report No. A-153 (BPCT-890613KF).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-173

In the Matter of

Amendment of Section 73.202(b), RM-7558
Table of Allotments,
FM Broadcast Stations.
(Jackson, Wyoming)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 13, 1991; Released: June 21, 1991

Comment Date: August 12, 1991
Reply Comment Date: August 27, 1991

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making, as amended, filed by Teton Broadcasting Limited Partnership ("petitioner"), permittee of Station KZJH-FM, Channel 239C, Jackson, Wyoming, requesting the substitution of Channel 237C for Channel 239C at Jackson and the modification of its authorization accordingly. Petitioner did not state that it would apply for the new channel, if allotted, and is expected to do so in reply comments. *See* Paragraph 2 of the Appendix, *infra*.

2. Petitioner states that an intermodulation interference problem currently exists because Station KZJH operates in close proximity to another FM station at Jackson Hole, Wyoming, and to a two-way mobile frequency currently used by the Wyoming Highway Department. According to petitioner, this intermodulation problem causes objectionable interference to the Wyoming Highway Department's communications with road maintenance personnel. The petition contains documentation of the unsuccessful efforts made by petitioner and the Wyoming Highway Department to resolve the problem. Petitioner claims that these efforts indicate that the only way to eliminate the problem is for Station KZJH to operate on a different frequency. Petitioner further claims that Channel 237C is the only available frequency which would satisfy the Commission's spacing requirements and minimally impact the Highway Department's operations. Finally, petitioner notes that the Commission has granted Station KZJH special temporary authority to operate on Channel 237C.

3. We believe the public interest would be served by proposing the substitution of Channel 237C for Channel 239C at Jackson, Wyoming, and the modification of the construction permit of Station KZJH to specify the new channel, since it would allow Station KZJH to provide Jackson with clear radio reception and alleviate the existing problem with intermodulation interference to the Wyoming Highway Department's mobile radio system. A Commission engineering analysis indicates that Channel 237C can be allotted to Jackson at petitioner's present construction permit site in compliance with the Commission's minimum distance separation requirements. [1]

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Jackson, Wyoming	239C, 245C1	237C, 245C1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **August 12, 1991** and reply comments on or before **August 27, 1991,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Stuart B. Mitchell, Esq.
Mitchell, Boyer & Associates, P. C.
5025-C Backlick Road
Annandale, Virginia 22003
(Counsel for the petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the

[1] Coordinates for Channel 237C at Jackson are 43-27-40 and 110-45-09.

other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

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5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NTS COMMUNICATIONS, INC. File No. I-T-C-91-091

Application for authority to acquire and operate facilities for direct service to Mexico.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 14, 1991; Released: June 21, 1991

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to Mexico by NTS Communications, Inc. (NTS).

2. Accordingly, IT IS ORDERED that application File No. I-T-C-91-091 IS GRANTED, and NTS Communications, Inc. is authorized to:

a. lease and operate 24 voice-grade microwave circuits between its operating offices and each of the following five U.S.-Mexico border crossing points--McAllen, Texas; El Paso, Texas; Nogales, Arizona; San Ysidio, California; and Calexico, California; and

b. use said facilities to provide private line and switched voice services between the U.S. and Mexico and beyond.

3. IT IS FURTHER ORDERED that the private line services authorized herein shall not be interconnected with the public switched telephone network. Furthermore, it should be noted that further authorization is required should the applicant decide to construct its own fiber optic or microwave facilities crossing the U.S.-Mexico border.

4. A copy of any operating agreements entered into between the applicant and its correspondent shall be filed with the Commission within 30 days of its execution.

5. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

6. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ALASCOM, INC.

Request for Ratemaking
Recognition of an
Antitrust Settlement

MEMORANDUM OPINION AND ORDER

Adopted: June 11, 1991; Released: June 24, 1991

By the Commission:

I. INTRODUCTION

1. On March 5, 1990 Alascom, Inc. (Alascom) filed a petition for reconsideration of the *Alascom Settlement Order*,[1] in which the Common Carrier Bureau (Bureau) recognized for ratemaking purposes only $5.7 million of Alascom's $17.5 million prejudgment settlement payment to General Communication, Inc. (GCI). The Bureau referred Alascom's petition to this Commission.[2] For the reasons stated below, we grant in part, and deny in part, Alascom's petition.

II. BACKGROUND

2. In the *Litigation Costs Order*, [3] the Commission determined that carriers must record in a nonoperating expense account payments to settle cases involving an allegation that they violated a federal law. This policy is to prevent carriers from routinely imposing on ratepayers the costs associated with settling cases involving allegations of wrongdoing. Recording the settlement payment in a nonoperating account does not preclude the carrier from seeking recovery of the payment from ratepayers. The accounting treatment, however, isolates that cost and subjects it to a presumption of nonrecovery unless the carrier makes a special showing that ratepayers received a benefit from settlement.

3. The Commission's policy does not differentiate, for accounting purposes, between prejudgment and postjudgment settlements. In the *Litigation Costs Recon. Order*, however, the Commission recognized that carriers consider factors other than fear of an adverse judgment in reaching a prejudgment settlement, and that there may be benefits to ratepayers from avoiding litigation costs in certain cases. Accordingly, the Commission established a two prong test for ratemaking recognition of prejudgment settlements. The first prong of the test presumptively allows at least partial recovery of the settlement payment in the amount:

> corresponding to the additional litigation expenses, expressed in present value terms, which the carrier reasonably estimates it would have paid if it had not settled and which the carrier would have allocated to the interstate jurisdiction.[4]

The second prong of the test is necessary only when the full amount of the settlement payment is not presumptively recoverable from ratepayers. That prong requires the carrier to rebut the presumption of nonrecovery[5] by showing "the basic factors that induced the carrier to settle," and "demonstrate the benefit to the ratepayers."[6] Thus, for recovery of a prejudgment settlement from ratepayers, a carrier enjoys a presumption of recovery of the settlement in the amount equal to its saved litigation costs. For prejudgment settlements exceeding the action's saved litigation costs, a carrier must rebut the presumption of nonrecovery by demonstrating the benefit of the settlement to ratepayers.

4. On April 24, 1984, GCI filed an antitrust action against Alascom and American Telephone and Telegraph Co. (AT&T), seeking $25 million in damages.[7] AT&T and GCI settled in 1985.[8] On May 14, 1988, Alascom, GCI, and AT&T reached a prejudgment settlement agreement with a net settlement payment of $17.5 million to GCI.[9] Thereafter, Alascom requested that the Commission recognize for interstate ratemaking purposes its settlement payment to GCI, citing the policy set forth in the *Litigation Costs Order*.[10]

5. Before the Bureau acted on Alascom's request, the Commission released the *Litigation Costs Recon. Order*. By letter dated October 25, 1989, Alascom supplemented its request and addressed the presumption of recovery. Alascom estimated that its saved litigation costs exceeded its settlement payment, and therefore, claimed that it was presumptively entitled to full recovery of the settlement from its ratepayers.[11] Alascom also claimed that it had sufficiently shown that its settlement was of benefit to the ratepayers, and thus, was entitled to full ratemaking recognition of the settlement payment even without the benefit of the presumption of recovery.[12]

6. The Bureau determined that approximately $5.74 million of Alascom's settlement fell within the presumption of recovery, and only the interstate portion of that amount would receive ratemaking recognition.[13] The Bureau found that Alascom's estimated costs of a supersedeas bond, plaintiff's legal fees, and retrial expenses were not litigation costs associated with a "favorable verdict", and therefore, were not the type of saved litigation costs contemplated by the Commission under the presumption of recovery.[14] The Bureau also found that Alascom's estimated saved costs from certain collateral proceedings[15] were not within the purview of the presumption of recovery. Specifically, the Bureau concluded that saved costs associated with collateral proceedings must be saved as a direct result of the antitrust action and the issues in the collateral proceedings must be "determinative of the issues" in the settled proceeding if those costs are to be included in the presumption of recovery.[16] The Bureau also did not grant ratemaking recognition to Alascom's saved litigation costs associated with the replacement of in-house counsel because Alascom failed to show "with reasonable certainty that the costs would have been incurred."[17]

7. Although Alascom sought to include certain other estimated indirect costs of the litigation in the presumption of recovery, and raised equitable arguments, the Bureau concluded that these "are not factors to be considered under the presumption of recovery; rather they are to be considered under the general guidelines of the *Litigation Costs Order*."[18] The Bureau, applying the "benefit to the ratepayer" standard announced in the *Litigation Costs Order*, considered Alascom's equitable arguments and found that they did not present any unique circumstances justifying the recovery of any additional amounts of the settlement from ratepayers.[19] The Bureau specifically found unpersuasive Alascom's argument that its avoidance of satellite leasing costs (see n. 12, *supra)* was a benefit to ratepayers justifying recovery of the entire settlement amount from ratepayers. Instead, the Bureau stated that the satellite costs were "remote" and reflected Alascom's "fear of adverse judgment."[20]

8. On March 5, 1990, Alascom requested that the Bureau reconsider the *Alascom Settlement Order*.[21] In recognition of the important issues raised by Alascom, the Bureau referred the petition to this Commission. We now address the concerns raised by Alascom.

III. DISCUSSION

A. Presumption of Recovery

9. At the outset, we reiterate the standards governing ratemaking recognition of prejudgment settlements under the presumption of recovery. The *Litigation Costs Recon. Order* states that prejudgment settlement payments enjoy the benefit of the presumption of recovery only to the extent that: (1) the payment corresponds to the additional litigation expenses which the carrier would have paid if it had not settled, and (2) the carrier reasonably estimates the amount it would have paid without settlement.[22]

1. Application of the Presumption of Recovery

a. Comments

10. As a general matter, Alascom claims that the Bureau's approach to the Commission's "new prejudgment settlement guidelines" is so unduly restrictive that it actually discourages settlements which would benefit ratepayers.[23] Alascom also contends that the Commission's standards regarding prejudgment settlements were vague at the time of both its initial and subsequent requests for ratemaking recognition of the settlement payment. As a result of this vagueness, Alascom states that it "is unfair for the *Bureau Order* [*Alascom Settlement Order*] to disallow costs now on the basis of particularized tests and standards of proof of which Alascom was not aware."[24]

b. Discussion

11. We do not believe that our litigation expense recovery guidelines are "so unduly restrictive that [they] discourage settlements which would benefit ratepayers."[25] Rather, our discussion below of each issue relating to Alascom's request for reimbursement in this order reflects a balance between encouraging beneficial settlements and discouraging the recovery of excessive costs that could provide an incentive for settlements that are not in the public interest. Likewise, despite its concerns, Alascom clearly has had a full opportunity upon reconsideration to present its case and make the requisite showings for recovering its expenses.

2. Collateral Proceedings

a. Background

12. The *Alascom Settlement Order* held that saved litigation expenses from collateral proceedings were "presumptively recoverable . . . only if the issues in the collateral proceeding were determinative of the issues in the subject proceeding."[26] It then found that Alascom's claimed savings from two collateral proceedings were not presumptively recoverable under this test.[27] It found that Alascom had failed to provide proof that the issues raised in the first collateral proceeding, a declaratory ruling brought by GCI against AT&T in an Alaska state court, "were similar" to the antitrust case issues. It likewise rejected Alascom's request to recover costs in a second collateral proceeding, an action brought before the Alaska Public Utilities Commission (APUC) dealing with an intrastate traffic question. It found that Alascom had not proved that the APUC settlement, which came several months after the antitrust settlement, was "directly related" to the antitrust settlement.[28]

b. Comments

13. Alascom contends that the Bureau's "determinative issues" criterion for including collateral proceedings' costs under the presumption of recovery is contrary to the Commission's standard for recovery of settlement payments. Alascom suggests that a proper test would be recovery of those "estimated expenditures [that] were saved as a direct result of the settlement."[29] Under its "test", Alascom argues, the declaratory ruling proceeding is presumptively recoverable because that collateral proceeding was dismissed as part of the antitrust settlement. The APUC proceeding, Alascom claims, also meets its test because the issues involved in the APUC proceeding were identical to those issues in Alascom's counterclaim in the antitrust suit. Alascom also contends that, contrary to the Bureau's finding, the APUC proceeding involved questions about the relationship between interstate and intrastate operations, making it the "appropriate" type of proceeding in which to recover costs from interstate ratepayers.[30]

14. AT&T states in its opposition to Alascom's petition that the Bureau correctly denied presumptive recovery status to the estimated saved costs from the collateral proceedings.[31] AT&T asserts that the "determinative issues" test and Alascom's "direct result" test are the same; "an inquiry as to whether the antitrust settlement was so closely related to the collateral proceeding that it directly caused litigation savings that would inure to the benefit of interstate ratepayers."[32] Under this test, AT&T argues, Alascom would not be entitled to recover its estimated saved costs from the declaratory ruling proceeding because the antitrust suit, settled or not, would have decided all issues involving Alascom in that proceeding, and thus, there would be no costs to be saved. AT&T maintains that it was the starting of the antitrust action before the declaratory ruling, not the settlement, that saved Alascom expenses in the declaratory ruling proceeding. AT&T claims that savings from the APUC proceeding did not

benefit interstate ratepayers because it involved only intrastate questions, and therefore, falls outside the presumption of recovery.

15. Alascom responds that AT&T mischaracterizes the nature of the collateral proceedings. Alascom states that the issue at the heart of the declaratory ruling proceeding was a significant part of its counterclaim. Moreover, Alascom maintains that the declaratory ruling proceeding was not as simple as AT&T alleges, and it was the settlement of the antitrust action, not just the beginning of the antitrust action, which saved the costs of the declaratory ruling proceeding. Alascom also argues that the APUC proceeding involved the use of interstate facilities, and thus, involved more than intrastate questions. Moreover, Alascom states that the question should be whether saved litigation costs were avoided as a direct result of the antitrust action.

c. Discussion

16. We agree with Alascom that litigation costs saved in collateral proceedings as a direct result of a settlement are presumptively recoverable. Such costs "would have been paid if [the primary proceeding] had not settled . . . ."[33] Conversely, if the direct result test is not met, then the carrier appropriately bears the burden of justifying the recovery of its alleged expenses under the "benefit to ratepayers" test.[34]

17. Applying this test, we find, contrary to the Bureau's conclusion, that the settlement of the declaratory ruling was the direct result of settlement of the antitrust case, and that Alascom may presumptively recover the saved litigation costs from settlement of the declaratory ruling. Indeed, it appears to be uncontrovertible that the settlement of the declaratory ruling proceeding was a direct result of the antitrust action settlement, because the two proceedings were terminated as a result of a single agreement. In this regard, settlement of the antitrust action clearly had the direct result of Alascom saving litigation expenses from pursuing the declaratory ruling.

18. We are not convinced by AT&T's argument that the declaratory ruling proceeding costs were not "saved" by settlement because resolution of the antitrust action would have resolved the issue at stake in the declaratory proceeding, obviating the need for any separate litigation costs in that proceeding. Although resolution of the antitrust action would have settled issues involving Alascom in the declaratory ruling, we are not persuaded that this would lead to Alascom having *no* costs from the declaratory ruling proceeding. Importantly, AT&T does not state that Alascom would have been dismissed from the declaratory ruling proceeding. Moreover, we think it prudent for Alascom, if it remained a party to that proceeding after the end of the antitrust action, to continue to have representation in that action to protect its interest. Therefore, we find that the estimated saved litigation costs from termination of the declaratory ruling proceeding, in the amount of approximately $324,000, may be included in the presumption of recovery.[35]

19. We also find, contrary to the Bureau's conclusion, that settlement of the APUC proceeding was the direct result of settlement of the antitrust case, and that Alascom may presumptively recover the saved litigation costs from settlement of the APUC proceeding. Alascom argues, and the *Alascom Settlement Order* recognized, that the APUC proceeding resulted from Alascom's counterclaim in the antitrust action. Moreover, both the counterclaim and the antitrust action and the subsequently filed APUC complaint involved the same allegation that GCI had misappropriated Alascom's intrastate traffic. Thus, resolution of the issues in the antitrust action would have determined their resolution in the APUC proceeding as well. In this circumstance, the APUC proceeding costs meet the direct result standard because costs from the APUC proceeding "would have been paid if the [primary proceeding] had not settled."[36] AT&T is properly concerned that the APUC proceeding simply involved intrastate issues. However, we find that consideration not to be a reason to exclude all the costs from the presumption of recovery. In determining the final amount of the settlement to be borne by interstate ratepayers (*See* n. 68, *infra*), the Bureau shall take into account the extent to which the APUC proceeding involved intrastate issues, and shall exclude those costs. This allocation is necessary to ensure that interstate ratepayers bear only the costs associated with Alascom's interstate operations. We find, therefore, that the estimated total company saved litigation costs of $331,100 associated with termination of the APUC proceeding may be included in the presumption of recovery.[37]

3. In-House Counsel Replacement Costs

a. Comments

20. In its October 1989 letter, Alascom claimed that its estimated saved in-house counsel replacement costs were recoverable under the presumption of recovery. The Bureau stated that, although such saved costs might be presumptively recoverable under some circumstances, Alascom's saved costs in this regard were not presumptively recoverable because of Alascom's lack of documentation thereof and the size of outside legal efforts.[38] In its petition, Alascom claims that the Bureau improperly excluded its in-house counsel replacement costs as speculative. Alascom states that it does not generally enter into project-specific arrangements, but, without settlement, "in-house counsel would have been so involved with the trial, that assistance of outside counsel would have been required."[39] Alascom also contends that, although the antitrust case was adequately staffed by outside counsel, substantial in-house counsel help was needed because in-house counsel were "intimately familiar with the particular facts underlying the litigation, and necessarily were, and would have had to continue to have been, heavily involved in the case."[40]

b. Discussion

21. We find that Alascom should presumptively recover the costs associated with the replacement of in-house counsel during the antitrust trial and the collateral proceedings. We agree with the Bureau that the magnitude of outside effort was considerable, but it appears in this case that the in-house attorneys would have been necessary to the defense of the antitrust action because of their intimate familiarity with the particular facts underlying the litigation. We find that this reasoning is also applicable to the collateral proceedings. We are not convinced that this is true for the appeal of the antitrust action. Alascom failed to provide adequate supporting evidence for its estimated costs associated with replacement of in-house counsel during the appeal. We find Alascom's estimate of 960 hours for replacement counsel during appeal not credible when compared with its estimate of 1392 hours

during trial. In this regard, we note that appeals are often more limited than trial, and that outside counsel would not need to rely to any substantial extent on in-house counsel in light of his or her own familiarity with the trial record. Also, as noted below, we find that parties shall not presumptively recover appeal expenses associated with unfavorable verdicts.[41] Therefore, we conclude that Alascom may recover $477,280 under the presumption of recovery for the costs associated with replacement of in-house counsel for the antitrust trial and collateral proceedings.

4. Internal Costs from Employee Salaries and Benefits

a. Comments

22. Alascom argues that the Bureau improperly excluded as speculative its estimated "internal costs", *i.e.*, salaries and benefits of employees involved in the antitrust action, from the presumption of recovery. Alascom also states that the Bureau's decision to exclude opportunity costs, but not overtime or employee replacement costs, is without foundation. According to Alascom, internal costs represent lost resources to the company. Settlement permitted company management and key personnel to focus on running the enterprise, rather than defending a lawsuit. Moreover, Alascom states that it is not seeking double recovery, but merely recognition that part of the decision to settle included consideration of the drain on its resources.

b. Discussion

23. We find that only the costs associated with replacement of employees needed for trial preparation and trial should be presumptively recoverable. Only these additional costs "would have been paid" if the suit had not been settled. On the other hand, Alascom would have incurred the costs of employee salaries even in the absence of settlement because, as noted by the Bureau, "salaries and benefits must be paid to Alascom employees, regardless of the settlement."[42] While it is obvious that a trial may at times prevent employees from focusing on other matters, it is also true that there is no additional payment of money by a company from having an employee (already on the payroll) concentrate on a trial. Even the efficiency loss to the company may be minor, moreover, because the employee may have had free time to work on the trial, or may have been working on noncritical issues that could have been performed at a later date. Although we understand that Alascom considered employee opportunity costs in making its decision to settle, the consideration does not benefit from our presumption of recovery.[43]

5. Costs Associated with an Unfavorable Verdict

a. Comments

24. Alascom, in a footnote, also apparently seeks reconsideration of the Bureau's decision that Alascom's estimated costs for plaintiff's legal fees, supersedeas bond and retrial expenses should not be considered under the presumption of recovery standard. Alascom contends that the Bureau's rule, which allows only those costs associated with an initial favorable verdict, to pass under the presumption of recovery is inconsistent with the reality of litigation and settlements. Realistic litigation analysis, Alascom states, required it to consider the possibility that even a nominal award to GCI could include a substantial award of attorney's fees.

25. AT&T states that the Bureau's standard in this regard correctly interprets the Commission's litigation costs policy. AT&T claims that a "settlement 'saving' these expenses is generally of no benefit to ratepayers, who would not have had to pay these expenses in any case. Thus, the Bureau's 'crisp' rule is an appropriate, indeed inescapable, corollary to the Commission's prior findings."[44]

b. Discussion

26. The Bureau's decision to exclude costs associated with an unfavorable verdict from the presumption of recovery accurately reflects the Commission's policy concerning settlements of federal court actions. The *Litigation Costs Order* and *Litigation Costs Recon. Order* hold that carriers may not recover the costs of adverse judgments, or settlements following adverse judgments, because it would be inappropriate in most circumstances to pass those types of expenses onto ratepayers.[45] We believe it follows that carriers may not presumptively recover expenses associated with an unfavorable verdict, which is like an adverse judgment. Although it is possible that a carrier could successfully appeal an initial unfavorable verdict, such a result appears at best speculative and therefore should not benefit from the presumptive recovery standard. Of course, carriers can recover costs associated with an unfavorable verdict (or appeal thereof) upon a particularized showing of benefit to ratepayers. Alascom did not attempt such a showing here. Accordingly, we affirm the Bureau's exclusion from the presumption of recovery Alascom's estimated saved litigation costs of plaintiff's fees,[46] supersedeas bond, and retrial expenses.

B. Benefit to the Ratepayers Standard

27. Under the "benefit to the ratepayers" standard, a carrier must rebut a presumption of nonrecovery to recover any settlement amount in excess of the presumptively recoverable amount.[47] Moreover, the recovery of settlement under this rebuttable presumption is limited:

> a carrier might be able to justify including a particular settlement in its revenue requirement computation by demonstrating that the settlement did not exceed the nuisance value of the suit and accordingly avoided litigation expenses that would have been indirectly paid by ratepayers. Other circumstances may also justify inclusion of settlements in the regulated revenue requirements in *certain limited case* (emphasis added).[48]

We believe that the "limited" language requires the carrier, in demonstrating the basic factors which induced it to settle, to make showings beyond the ordinary circumstances faced by carriers in suits to justify any additional recovery of the settlement payment from ratepayers.

1. Equitable Factors

a. Comments

28. Alascom states that the settlement facilitated the realization of the Commission's rate integration and competitive market policies. Alascom claims that it was the "clash between GCI's attempt to establish itself in a newly competitive market and Alascom's efforts to initiate tariff changes consistent with rate integration, both in the context of FCC policies not yet fully harmonized, that gave rise to the antitrust action."[49] Alascom maintains that, although these issues were referred to a Joint Board, the tension rising from the antitrust action delayed resolution of these issues; settlement eased this tension. Moreover, the agreement itself recognized the value of removing litigation as a factor in resolving the Alaska market structure issues.[50] Alascom maintains that the settlement was necessary for the Joint Board to move forward and reach a solution for the Alaska market.

29. AT&T responds that the settlement did not normalize business relationships between the parties. AT&T states that the important issues surrounding the Alaska market are still pending before this Commission. AT&T argues that this very request by Alascom, which, if granted would require AT&T to pay for much of Alascom's cost of settling with GCI, is not conducive to a normalized business relationship between AT&T and Alascom.

30. Alascom also states that the Bureau did not give enough weight to Alascom's statement that it did not settle in fear of an adverse judgment, as evidenced by the favorable pretrial rulings and rulings by the Commission on questions referred to it by the court.[51] AT&T asserts in rebuttal that, although some of the pretrial rulings were favorable to Alascom, GCI's claims remained strong. AT&T contends that the Commission's *Referral Orders* found several problems with Alascom's provision of interstate service in relation to the antitrust suit. In response, Alascom states that AT&T seizes upon the few issues unfavorable to Alascom, and reiterates its position that it settled under favorable conditions.

b. Discussion

31. We agree with the Bureau that the equitable factors Alascom presents are not sufficiently significant to favor granting ratemaking recognition to the remainder of the settlement payment. Although we recognize that the settlement removed one obstacle from the path of market structure problems in Alaska, we agree with the Bureau that settlement did not significantly reduce the overall Alaska market problems.[52] This is not an "impossible standard to meet," as Alascom claims. Rather, it simply recognizes that we are not in a position to determine that settlement reduced the adversarial character of the relationship between the parties, particularly when one party reasonably claims the settlement created other problems.[53] We cannot accord significant weight to this equitable factor based on this record. Thus, we cannot allow recovery of any additional amount of the settlement.

32. We acknowledge Alascom's belief that it did not settle in the face of an adverse judgment. That is not the relevant issue, however. In the *Litigation Costs Order* we stated that we would consider, *inter alia*, "significant rulings by the court that are adverse to the plaintiff's case . . . ."[54] Contrary to Alascom's position, the *Referral Orders* were not "overwhelmingly" in Alascom's favor; rather on a significant number of questions the Commission reached a mixed conclusion.[55] Moreover, we cannot find that mixed conclusions are "significant rulings" adverse to the plaintiff. As for the pretrial motions, we accept Alascom's statement that it received rulings in its favor on some important issues, however, we cannot find that they overwhelmingly favored Alascom so as to warrant recovery of the remaining amount of the settlement payment from ratepayers. Several important issues remained in dispute and therefore, we cannot consider such rulings so significant that they warrant imposition of the costs of this settlement on the ratepayers.[56]

2. Satellite Investment Factor

a. Comments

33. Alascom argues that the settlement benefitted ratepayers because it allowed Alascom to purchase (instead of lease) a satellite, saving ratepayers $20 million in leasing costs. Alascom states that the Bureau's skepticism that the purchase of the satellite was impeded by the antitrust suit was unwarranted, and in support thereof provides an affidavit from the Chairman of Alascom. The affidavit states that the antitrust litigation was a critical and central factor in deferring purchase of the satellite because the absence of a settlement created a "financial cloud" over Alascom's financial position that would have kept the company from undertaking an expensive satellite purchase. Moreover, Alascom claims that the Commission should not substitute its own sense of business judgment for the "uncontroverted business judgement of the company in this regard."[57]

34. AT&T argues that no allegations in the antitrust suit prevented purchase and launch of the new satellite. AT&T also states that Alascom's speculative claims regarding the avoidance of satellite leasing costs do not justify the recovery of settlement payments from ratepayers. In AT&T's view, the "cloud" perceived by Alascom was either due to Alascom's "fear of losing," or the "cloud" was only speculative.[58] If it were otherwise, states AT&T, "any carrier which claimed to have delayed business expenditures as a result of lawsuits could obtain a complete allowance of the settlements which 'avoided' those adverse business results."[59]

35. In rebuttal, Alascom states that the decision to defer satellite purchase was reasonable because the same people needed to negotiate a satellite purchase contract were also needed in the antitrust action. Since the contract negotiations would have taken place during the antitrust action, those people would have been unavailable.

b. Discussion

36. We agree with the Bureau that the avoidance of satellite leasing costs is too speculative for us to recognize any additional amount of the settlement payment in the ratemaking process. Notwithstanding Alascom's affidavit, we find it unpersuasive that Alascom decided to postpone a purchase, at significant financial loss, due to an antitrust suit that it constantly argues was winnable. Moreover, Alascom's position is contrary to our view that it is not in the ratepayers interest to delay investment in needed plant during litigation, particularly when the carrier will recover that investment through the ratemaking process. Also, business decisions concerning the investment of funds for capital goods are ongoing for any carrier facing

litigation. Imposition of the costs from these decisions in the guise of settlement recovery would essentially render our litigation costs policy meaningless. Thus, we conclude that the saved costs associated with leasing satellite space are too speculative to be recognized under the benefit to ratepayers criterion.

3. Totality of Circumstances under the Benefit of the Ratepayer Standard

37. Besides finding that Alascom has failed to meet its burden of showing a benefit to ratepayers from any specific factor (including better relations with parties involved in the Alaska market and saved satellite leasing costs), we find no evidence that the "totality" of factors claimed by Alascom warrants recovery by Alascom of any additional litigation expenses. We found each specific factor to be highly speculative, and the combined significance of those factors does not meet Alascom's burden of showing ratepayer benefit. Accordingly, we conclude that Alascom has not rebutted the presumption of nonrecovery, and that it is entitled to recover from ratepayers only the $6,873,030 allowed in the *Alascom Settlement Order* and paragraphs 18, 19, and 21 *supra*.

C. Other Matters

1. Comments

38. Alascom argues that it does not seek recovery of any portion of the settlement from ratepayers through specific changes in its rates; rather Alascom seeks to record the full settlement amount in an above the line account.[60] Alascom states that these costs will be subject to jurisdictional cost allocation procedures, and the resulting interstate portion will be recovered by Alascom through settlements.

39. Alascom also states that a present value adjustment for its estimated saved litigation costs is unnecessary because anticipated annual increases in these other expenses would have equaled, if not exceeded, inflation; however, Alascom did submit discounted figures.[61] Alascom also seeks to increase the amount of avoided costs that it detailed in its October 1989 request to reflect inflation. AT&T responds that Alascom must calculate the present value of the costs, and it objects to Alascom's desire to inflate all future costs before it discounts to 1988 values. AT&T also argues that the discount rate should be the current rate of return for the Bell Operating Companies. Finally, AT&T contends that the resultant amount of the settlement expense after discounting 12% should be subjected to jurisdictional separations treatment, leaving only the interstate portion of the recoverable costs attributable to joint MTS/WATS services to be recovered by Alascom in settlements from AT&T.

40. Alascom replies that it is not inflating costs. Alascom maintains that its original litigation estimate was in 1988 dollars. It is reasonable, contends Alascom, to expect increased expenses, and thus the change from its original estimate is reasonable. Also, Alascom argues that a 9% discount rate is proper to adjust for inflation.

2. Discussion

41. We made clear in the *Litigation Costs Order* and the *Litigation Costs Recon. Order* that the carrier must record all settlements in a nonoperating account.[62] There is no accounting procedure that would allow Alascom to transfer the net payment to an operating account years after the payment was made. We have established a procedure for a carrier to employ if it desires to impose settlement costs on interstate ratepayers; that procedure requires carriers to make a revenue requirement adjustment at the interstate level rather than move the costs to an operating account and separate the costs through the separations procedures. Alascom has given no reason warranting departure from this procedure.

42. Alascom must use the figures it presented to the Bureau in its October 25, 1989 letter to determine the settlement amount recoverable from ratepayers. The *Litigation Costs Recon. Order* stated that a party seeking recovery of a settlement payment from ratepayers should provide adequate supporting material for its estimated saved litigation costs; "[i]nadequately supported estimates will not be accepted."[63] Under this standard, Alascom's Petition estimates fail. Alascom's Petition, unlike its October 25, 1989 Letter, does not provide any documents that support its estimated cost increases. Moreover, we believe that the parties providing Alascom with estimated costs of litigation in the October 25, 1989 Letter took into account potential future increases in costs. Alascom stated in the October 25, 1989 letter that it had discussions with "counsel, both outside and corporate, who actually handled the matters", and provides documented estimates from these people.[64] In providing these estimates, Alascom stated that "projected costs are based on the assumption of a four-month trial, an appeal, and a retrial of all or part of the defensive case and the counterclaim against AT&T."[65] We do not doubt that the estimates provided to Alascom took into account the fact that the litigation would occur over a two year period since the people providing estimates are familiar with the time period for such litigation.

43. We also require Alascom to discount the value of the recoverable amount at the authorized rate of return of 12 percent. Alascom must use the authorized rate of return because (1) Alascom offered no basis for the use of a 9 percent figure, and (2) this is the figure that we routinely use in present value determinations.[66] Moreover, if the case had not settled, and Alascom had won, presumably Alascom would have recovered its litigation costs, including the authorized rate of return, from ratepayers. Accordingly, Alascom must discount the allowance of $6,873,030[67] to present value using the authorized rate of return.[68]

IV. ORDERING CLAUSE

44. Accordingly, IT IS ORDERED, that pursuant to Sections 4(i), 201-205, 220, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201-205, 220, and 405, Alascom's Petition for Reconsideration IS GRANTED to the extent indicated above, and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Alascom, Inc. Request for Ratemaking Recognition of an Antitrust Settlement, *Memorandum Opinion and Order*, 5 FCC Rcd 654 (Com.Car.Bur. 1990) (*Alascom Settlement Order*).

[2] *See* 47 C.F.R. §§ 1.104(b) and 1.106(a)(1).

[3] Notice of Proposed Rule Making to amend Part 31 Uniform System of Accounts for Class A and Class B Telephone Carriers to Account for Judgments and Other Costs Associated with Antitrust Lawsuits, and Conforming Amendments to the Annual Report Form M, *Report and Order*, 2 FCC Rcd 3241 (1987) (*Litigation Costs Order*), *recon.*, 4 FCC Rcd 4092 (1989) (*Litigation Costs Recon. Order*), appeal pending *sub nom.* Mountain States Telephone & Telegraph Co. v. FCC, Case No. 89-1421 (D.C. Cir. filed July 7, 1989).

[4] *Litigation Costs Recon. Order*, 4 FCC Rcd at 4097. We will refer to expenses considered under the presumption of recovery as saved litigation costs.

[5] *See Litigation Costs Order*, 2 FCC Rcd at 3241 ("inclusion of an expense in [a nonoperating] account creates a presumption that the expense will not be reflected in charges to ratepayers") and 3245 ("we conclude that the accounting classification [nonoperating account] which we proposed in the *Notice* is the best way to proceed").

[6] *Id.* The Commission listed such "basic factors" as "the cost of continuing the litigation, the burden of the defense on the company, significant rulings by the court that are adverse to the plaintiff's case, and other factors routinely quantified in litigation risk analyses." *Id.*

[7] GCI v. Alascom, Case No. C84-523 (W.D. Wash. filed April 24, 1984).

[8] AT&T remained a party to the action as a result of Alascom's counterclaim against AT&T and GCI in regard to their settlement agreement.

[9] Alascom agreed to pay $27.5 million to GCI. However, AT&T agreed to pay $10 million to Alascom on the counterclaim. The result was a net settlement payment by Alascom of $17.5 million to settle GCI's antitrust suit.

[10] *See* Alascom Letter dated July 19, 1988. AT&T filed an opposition to Alascom's request.

[11] Alascom October 25, 1989 Letter at 17. Alascom claimed that its saved litigation costs included trial, appeal, and retrial expenses (including salaries and benefits of those Alascom employees who were involved in the antitrust action and replacement costs of in-house legal counsel), plaintiff's legal fees, a supersedeas bond, and expenses associated with two parallel proceedings.

[12] *Id.* at 17-20. Alascom claimed that it would have been forced to lease satellite space rather than purchase a satellite if the antitrust suit continued. Alascom estimated that satellite leasing costs exceeded purchase costs by $20 million. Alascom argued that the full settlement should be recoverable from ratepayers because settlement kept them from bearing the increased costs of leasing. Moreover, Alascom stated that, under the *Litigation Costs Order* standards, certain equitable factors favoring its position furthered the claim that settlement was a benefit to ratepayers, justifying recovery of the full settlement from ratepayers. *See* paras. 32-36, *infra*.

[13] *Alascom Settlement Order*, 5 FCC Rcd at 655.

[14] *Id.* at 656.

[15] Alascom claimed that it saved litigation costs in two collateral proceedings by settling the federal court proceeding. The first collateral proceeding, a declaratory ruling action brought by GCI against AT&T in an Alaska state court, involved issues regarding the provisions of the AT&T-GCI settlement agreement (the declaratory ruling proceeding). AT&T impleaded Alascom as a third party defendant in that action. The second collateral proceeding, an action brought by Alascom against GCI before the Alaska Public Utilities Commission (APUC), involved issues regarding GCI's provision of intrastate service (the APUC proceeding). Alascom states that this issue was the basis for its counterclaim in the federal court proceeding.

[16] *Alascom Settlement Order*, 5 FCC Rcd at 656. Our use of the term collateral is for convenience only and is not intended to make a determination that the proceedings were in fact collateral in any legal sense.

[17] *Id.*

[18] *Id.* at 656-657.

[19] *Id.* at 657.

[20] *Id.*

[21] AT&T filed an opposition to Alascom's reconsideration request. AT&T's position is set forth in Section III, *infra*.

[22] *Litigation Costs Recon. Order*, 4 FCC Rcd at 4097.

[23] Alascom Petition at 2.

[24] *Id.*

[25] *Id.*

[26] *Alascom Settlement Order*, 5 FCC Rcd at 656.

[27] *Id.*

[28] *Id.* The Bureau also noted that recovery based on the APUC settlement would be inappropriate because the APUC proceeding involved a state regulation.

[29] Alascom Petition at 5.

[30] Alascom represents that it is *not* seeking recovery of the costs associated with the APUC proceeding from interstate ratepayers. Rather, Alascom states, it only requests Commission approval to move the costs of the settlement into an operating account. *Id.* at 6-7. These are contradictory statements. As Alascom recognizes, recording the costs in an operating account would allocate a portion to the interstate jurisdiction to be recovered from interstate ratepayers. In any event, we have rejected Alascom's desire to "move" the settlement payment to an operating account. *See* para. 41, *infra*.

[31] AT&T Opposition at 4.

[32] *Id.*

[33] *Litigation Costs Recon. Order*, 4 FCC Rcd at 4097.

[34] *Id.*

[35] This amount is less than the amount that Alascom estimated in its October 1989 letter because the $902,470 claimed there includes costs, such as internal staff costs, that we have disallowed elsewhere in this decision. Also, this amount does not include Alascom's saved in-house counsel replacement costs associated with this proceeding; the allowance of those costs is discussed *infra*.

[36] *See* note 33, *supra*.

[37] Again, this amount is less than that estimated by Alascom in its October 1989 letter because the estimated costs in that letter included costs that we have disallowed elsewhere in this decision. Also, this amount does not include Alascom's saved in-house counsel replacement costs associated with this proceeding; the allowance of those costs is discussed *infra*.

[38] *Alascom Settlement Order*, 5 FCC Rcd at 656. The Bureau noted that Alascom estimated that trial would require a legal staff of 17 people.

[39] Alascom Petition at 8.

[40] *Id.* at 9.

[41] *See* para. 26, *infra*.

[42] *Alascom Settlement Order*, 5 FCC Rcd at 656.

[43] We acknowledge that, in limited situations, employee opportunity costs may be recoverable under the "benefit to the ratepayers" standard; however, Alascom, in its request for reconsideration, does not raise this issue.

[44] AT&T Opposition at 7-8.

[45] As we noted, "[v]ery compelling evidence would, of course, be required to justify a conclusion that ratepayers benefited from violations of statutes [and should therefore bear the costs of these violations]." *Litigation Costs Order*, 2 FCC Rcd at 3244.

[46] Alascom argues that GCI could have won only a nominal award and yet receive full payment for its attorneys' fees from Alascom. The amount of an award, however, is not the determinative factor. Ratepayers should not routinely bear settlement costs if a court finds wrongdoing by the carrier. Alascom is thus not entitled to a presumption of recovery for such costs.

[47] *See* note 5, *supra*.

[48] *Litigation Costs Order*, 2 FCC Rcd at 3246.

[49] Alascom Petition at 12.

[50] Alascom states that the agreement "expressly provides that the parties will not bring actions against each other under the antitrust laws as a result of efforts to settle the issues covered by the Joint Board deliberations." *Id.* at 14.

[51] The court referred several issues to the Commission under the doctrine of primary jurisdiction. GCI v. Alascom, Inc., No. C84-523 (W.D. Wash. August 26, 1986), *amended*, (March 13, 1986). The Bureau established procedures for handling these issues in Referral of Questions regarding General Communication, Inc. v. Alascom, Inc. from the United States District Court for the Western District of Washington at Seattle, Mimeo. No. 4563, released May 19, 1986. Examples of Commission action on the referred issues include Request for Declaratory Ruling of General Communication Incorporated Regarding Alascom's Misrepresentation and Misapplication of Its WATS Tariffs, *Memorandum Opinion and Order*, 3 FCC Rcd 700 (1988) and Request for Declaratory Ruling Pertaining to Alascom's Bid to Provide Federal Telecommunications Private Line Service, *Memorandum Opinion and Order*, 4 FCC Rcd 7304 (1988) (*GSA Bid Order*). We will refer to these orders collectively as the *Referral Orders*.

[52] The Joint Board in CC Docket 83-1376 released an order seeking additional comments on its proposed Alaska market structure. Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands, *Supplemental Order Inviting Comments*, 4 FCC Rcd 395 (1989) (*Supplemental Order*). The comments filed by the parties to the antitrust action in the *Supplemental Order* indicate that they still significantly differ over the appropriate Alaska market structure. These differences, which appeared in the parties' proposals for an appropriate Alaska market structure, led the Joint Board to propose two alternative plans and seek additional comment thereon. This comment period further delays any resolution in the Alaska market structure.

[53] *See* para. 29, *supra*.

[54] *Litigation Costs Order*, 2 FCC Rcd at 3246.

[55] *See Alascom Settlement Order*, 5 FCC Rcd at 657, 659 n. 38, *citing* Referral of Questions from General Communication, Incorporated v. Alascom, Inc. in the United States District Court for the Western District of Washington, *Memorandum Opinion and Order*, 3 FCC Rcd 700, 707 (1988). *See also* Arctic Slope Wright Schuchart and General Communication, Incorporated v. Alascom, Inc., *Memorandum Opinion and Order*, Mimeo No. 3627 (released April 4, 1985. We note also that, in the *GSA Bid Order*, the Commission found that Alascom undervalued transponders, underallocated the costs of certain earth stations, failed to use a reasonable allocation for the Vashon Island facility investment, and failed to include a portion of overhead costs from the Anchorage and Juneau earth stations in calculating its GSA bid, but the Commission could not determine the proper valuation or allocation for these items. *GSA Bid Order*, 4 FCC Rcd at 7322, 7325, 7330, and 7326.

[56] We note that, contrary to Alascom's statement, we are not attempting to reevaluate each and every issue resolved in the pre-trial rulings. However, more than a general analysis of the favorable rulings is necessary for us to determine if such rulings were significant.

[57] Alascom Petition at 17.

[58] AT&T Opposition at 10-11.

[59] *Id.* at 11.

[60] Alascom Petition at 18.

[61] *Id.* at 19 and Exhibit E.

[62] *Litigation Costs Order*, 2 FCC Rcd at 3245. *Litigation Costs Recon. Order*, 4 FCC Rcd at 4099. The nonoperating account for prejudgment antitrust settlements is 7370. 47 C.F.R. §32.7370(d).

[63] *Litigation Costs Recon. Order*, 4 FCC Rcd at 4098.

[64] Alascom October 25, 1989 Letter at 7.

[65] *Id.*

[66] *See generally* New York Telephone Co. and New England Telephone and Telegraph Co. Apparent Violations of the Commission's Rules and Policies Governing Transactions with Affiliates, *Order to Show Cause and Notice of Apparent Liability for Forfeitures*, 5 FCC Rcd 866 (1990) and New York Telephone Co. and Materiel Enterprises Co. Request for Confidential treatment of Certain Financial Information, *Memorandum Opinion and Order*, 5 FCC Rcd 874 (1990) (releasing audit report using the authorized rate of return to compute the present value of the refund owed).

[67] This figure includes the $5,740,650 already allowed by the Bureau, and the amount allowed herein. The estimated recoverable costs allowed herein are:

Declaratory Ruling Proceeding Costs	
Attorney fees:	$267,000
Travel costs for outside counsel:	$30,400
Transcript costs:	$13,000
Travel costs for Alascom:	$13,600
APUC Proceeding Costs	
Attorney fees:	$189,000
Travel costs for outside counsel:	$4,500
Transcript costs:	$14,600
Expert fees:	$22,000
Travel costs for Alascom:	$101,000
In-House Counsel Replacement Costs	
Trial:	$264,480
Declaratory Ruling Proceeding:	$30,400
APUC Proceeding:	$182,400
TOTAL	$1,132,380

[68] We delegate authority to the Bureau to establish, after consultation with the parties to the proceeding, the final amount to be included in the interstate revenue requirement.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE & TELEGRAPH CO. File No. I-T-C-91-115

Application for authority to acquire and operate three Digital Circuit Multiplication System Terminals for the provision of authorized services to Kuwait.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 18, 1991; Released: June 24, 1991

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application filed pursuant to Section 214 of the Communications Act of 1934, as amended, we find that the public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-91-115 IS GRANTED, and AT&T is authorized to:

a. acquire, install and operate three Digital Circuit Multiplication System (DCMS) Terminals; and

b. use these terminals to derive additional circuits for the provision of AT&T's regularly authorized services between the U.S. and Kuwait and beyond.

3. IT IS FURTHER ORDERED that the Appendix to File No. I-T-C-91-035 (*see* 6 FCC Rcd 1581 (1991)) is hereby revised.

4. This order is issued under Section 0.291 of the Commission's Rules and is effective upon its adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities
Division
Common Carrier Bureau

APPENDIX (REVISED)

Countries for which Additional DCMS Authority is Requested and Totals by Bearer Facility

American Samoa
Argentina
Aruba
Australia
Austria
Bahamas
Bahrain
Barbados
Belgium
Bermuda
Bolivia
Brazil
British Virgin Islands
Brunei
Bulgaria
Burkina Faso
Cape Verde
Cayman Islands
Chile
China
Costa Rica
Curacao
Cyprus
Czechoslovakia
Denmark
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Fiji Islands
Finland
France
Germany
Greece
Guam
Guatemala
Guyana
Haiti
Honduras
Hong Kong
Hungary
Iceland
India
Indonesia
Iran
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Korea
Kuwait
Malaysia
Malta
Marshall Islands
Micronesia
Montserrat
Netherlands
Netherlands Antilles
New Caledonia
New Zealand
Nicaragua
Nigeria
Norway
Pakistan
Panama
Papua New Guinea
Philippines
Poland
Portugal
St. Lucia
Saipan
Saudi Arabia
Singapore
South Africa
Spain
Sweden
Switzerland
Tahiti
Taiwan
Thailand
Tonga
Tortola
Trinidad
Turkey
Turks & Caicos
United Arab Emirates
United Kingdom
U.S.S.R.
Venezuela
Western Samoa
Yugoslavia

	IDR/ TDMA	TAT-8	HAW-4/ TPC-3	TCS-1	PTAT	TAT-9	Total
Totals	184	53	16	18	13	22	306

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-120

In the Matter of

Amendment of Section 73.202(b), RM-7218
Table of Allotments,
FM Broadcast Stations.
(Taos, New Mexico)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 17, 1991; Released: June 25, 1991

By the Chief, Allocations Branch:

1. At the request of Taos Communications Corp. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 5 FCC Rcd 1585 (1990), proposing the substitution of Channel 268C1 for Channel 268C2 at Taos, New Mexico, and the modification of its license for Station KTAO(FM) accordingly. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 268C1 for Channel 268C2 because it could provide the community with expanded radio service and enable Station KTAO(FM) to improve its coverage area. Channel 268C1 can be allotted to Taos in compliance with the Commission's minimum distance separation requirements at the transmitter site specified in Station KTAO(FM)'s outstanding construction permit (BPH-891128IF).[1] Issuance of a license for Channel 268C1, however, may be withheld until Station KNLA, White Rock, New Mexico, is licensed on Channel 266C3 or Channel 266C2. [2] As proposed, we will also modify petitioner's license for Station KTAO(FM) to specify operation on Channel 268C1 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 9, 1991** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Taos, New Mexico	260C2, 268C1

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Taos Communications Corp. for Station KTAO(FM), Taos, New Mexico, IS MODIFIED to specify operation on Channel 268C1, in lieu of Channel 268C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the following: Torjaq Radio, Inc., Station KNLA, P.O. Box 1176, Los Alamos, New Mexico 87544.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 268C1 at Taos are North Latitude 36-14-48 and West Longitude 105-39-15.

[2] Station KNLA was modified from Channel 266A to Channel 266C2 pursuant to the *Report and Order* in MM Docket 87-600, 3 FCC Rcd 3623 (1988). A construction permit for Station KNLA, as a Class C3 on Channel 266, is outstanding (BPH-890710IB).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-485

In the Matter of

Amendment of Section 73.202(b), RM-7433
Table of Allotments,
FM Broadcast Stations.
(Bolivar and Nixa,
Missouri)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 17, 1991; Released: June 25, 1991

By the Chief, Allocations Branch:

1. At the request of Sunburst II, Inc. ("petitioner"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 6536 (1990), proposing the reallotment of Channel 290C2 from Bolivar to Nixa, Missouri, and modification of the construction permit for Station KGBX-FM, Channel 290C2, to specify Nixa as its community of license. Petitioner filed comments and reply comments stating its intention to apply for the channel at the new community. Various residents of Bolivar, Missouri, filed informal comments.[1]

2. We believe the public interest would be served by reallotting Channel 290C2 from Bolivar to Nixa, Missouri, and modifying Station KGBX-FM's construction permit to specify Channel 290C2 at Nixa. Petitioner has shown that the reallotment of Channel 290C2 to Nixa will result in a preferential arrangement of allotments. Nixa (population 2,662)[2] would receive its first local aural transmission service. In addition, Bolivar (population 5,919) will continue to receive local transmission service from Station KYOO(AM).

3. Channel 290C2 can be allotted to Nixa at the petitioner's specified site 29.2 kilometers (18.2 miles) north of the community consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.[3] In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the construction permit for Station KGBX-FM to specify Nixa, Missouri, as its community of license on Channel 290C2, in lieu of its present use at Bolivar, Missouri.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 9, 1991** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Bolivar, Missouri	---
Nixa, Missouri	290C2

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Station KGBX-FM, IS MODIFIED to specify operation on Channel 290C2 at Nixa, Missouri, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in the construction permit (BMPH-890830IG) except the community, as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301); and

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with its construction permit (BMPH-890830IG) except for the community as specified above and a license application (Form 302) is filed within ten (10) days of commencement of program tests.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] These comments were not filed in accordance with the requirements of Section 1.420(c) and (e) of the Commission's Rules. Moreover, they were filed after the cut-off date and were not accompanied by a motion to accept. Therefore, they will not be considered in this proceeding.

[2] Population figures are taken from the 1980 U.S. Census.

[3] The coordinates for Channel 290C2 at Nixa are 37-17-10 and 93-10-15.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-87

In the Matter of

Amendment of Section 73.202(b), RM-7073
Table of Allotments,
FM Broadcast Stations.
(Marathon and Stevens Point,
Wisconsin)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 17, 1991; Released: June 25, 1991

By the Chief, Allocations Branch:

1. At the request of Eagle of Wisconsin, Inc. ("petitioner"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 1268 (1990), proposing the substitution of Channel 285C3 for Channel 285A at Stevens Point, Wisconsin, the change of the community of license for the channel from Stevens Point to Marathon, Wisconsin and modification of the license for Station WMGU(FM) to specify operation on Channel 285C3 at Marathon. Petitioner filed comments stating its intention to apply for Channel 285C3 at Marathon. No other comments were received.

2. We believe the public interest would be served by substituting Channel 285C3 for Channel 285A and reallotting the channel from Stevens Point to Marathon, Wisconsin, and modifying Station WMGU(FM)'s license to specify Channel 285C3 at Marathon. Petitioner has shown that the reallotment of the channel from Stevens Point to Marathon will result in a preferential arrangement of allotments. Marathon (population 1,552)[1] would receive its first local aural transmission service. In addition, Stevens Point (population 22,970) will continue to receive local transmission service from Stations WSPO(AM) and WSPT(FM).

3. Channel 285C3 can be allotted to Marathon, Wisconsin, at petitioner's specified site 12.9 kilometers (8 miles) southeast of the community consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules. [2] In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license for Station WMGU(FM) to specify Marathon, Wisconsin, as its community of license on Channel 285C3, in lieu of Channel 285A at Stevens Point, Wisconsin.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 9, 1991,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Marathon, Wisconsin	285C3
Stevens Point, Wisconsin	250C1

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WMGU(FM), Stevens Point, Wisconsin, IS MODIFIED to specify operation on Channel 285C3 in lieu of Channel 285A at Marathon, Wisconsin, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] Population figures are taken from the 1980 U.S. census.

[2] The coordinates for Channel 285C3 at Marathon are 44-49-40 and 89-45-33. Because this allotment is made as a result of a petition filed prior to October, 1989, the licensee of Station WMGU(FM) may avail itself of the provisions of Section 73.213(c)(1) of the Commission's Rules with respect to Station WKFX(FM), Channel 285A, Kaukauna, Wisconsin. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-176

In the Matter of

Amendment of Section 73.202(b), RM-7738
Table of Allotments,
FM Broadcast Stations.
(Fortuna and Rohnerville,
California)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 17, 1991; Released: June 25, 1991

Comment Date: August 16, 1991
Reply Comment Date: September 3, 1991

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of North Star Communications ("petitioner"), permittee of Station KQEX(FM), Channel 263A, Rohnerville, California, requesting the substitution of Channel 262C2 for Channel 263A and a change in the designation of its community of license to specify Fortuna, California. Petitioner premises its proposal on a desire to provide a first local wide area coverage FM transmission service to Fortuna.

2. In support of its proposal, petitioner states that incidents of flooding and its related consequences occur with seasonal regularity in the Eel River Valley Basin area, of which Fortuna is a part. Thus, petitioner believes a wide area coverage transmission service is essential to provide Fortuna and the surrounding inhabitants of the Eel Valley, which petitioner states comprises the business and trade areas of Fortuna, with vital information related to road conditions, local weather, civil defense news and warnings of other natural disasters during emergency situations.

3. Petitioner advises that Rohnerville was formally annexed to, and incorporated within, the City of Fortuna approximately 14 1/2 years ago. Thus, petitioner advocates that Rohnerville no longer exists as a separate entity. In support of its claim, petitioner provided a certified statement from Robert R. Brown, City Manager and Clerk of Fortuna, verifying Rohnerville's annexation, and included a certified copy of Ordinance No. 76-367 which reflects the Fortuna City Council's unanimous approval of the annexation. Petitioner also provided an official map of Fortuna which reflects that the boundaries of Rohnerville are encompassed within the city limits of Fortuna.

4. We believe the petitioner's proposal warrants consideration. This proposal will be evaluated pursuant to the provisions of Section 1.420(i) of the Commission's Rules.[1] In this regard, petitioner's proposal would provide a first local FM transmission service to Fortuna, which is currently served locally by fulltime Station KNCR(AM). While it would remove the only potential service at Rohnerville,[2] we believe that this proposal is unique in that Rohnerville does not exist as a separate entity, but has instead been annexed with Fortuna.[3] Our determination should not be construed as abrogating our allotment criteria, and is distinguishable from instances in which a licensee may seek to remove the sole local transmission service from a community in order to reallot that service to a neighboring community.

5. Channel 262C2 can be allotted to Fortuna consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules.[4]

6. In accordance with the provisions of Section 1.420(g) and (i), we shall propose to modify the construction permit for Station KQEX(FM) to specify operation on Channel 262C2 at Fortuna without accepting competing expressions of interest or requiring the petitioner to demonstrate the availability of an additional equivalent class channel.[5]

7. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

	Channel No.	
City	Present	Proposed
Fortuna, California	--	262C2
Rohnerville, California	263A	--

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

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[1] *See Modification of FM and TV Authorizations to Specify a New Community of License (Memorandum Opinion and Order)*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

[2] The permittee status of Station KQEX(FM) at Rohnerville does not presently constitute an "existing service" for purposes of Section 1.420(i) of the Commission's Rules, but rather a "potential service".

[3] This obsesrvation is further strengthened by the Census Bureau's determination that if a community has been annexed by an adjacent place, it cannot be defined as a Census Designated Place, thereby obviating its status as a separate, distinct community. *Geographic Areas Handbook*, U.S.C.B., March 1984. Thus, Rohnerville's annexation into Fortuna precludes its existence as a separate entity.

[4] Coordinates used in this determination are those at the authorized site for Station KQEX(FM) at 40-30-03 and 124-17-10.

[5] Although the petitioner requested the issuance of an *Order to Show Cause* in connection with its modification request, such action is not required.

9. Interested parties may file comments on or before **August 16, 1991,** and reply comments on or before **September 3, 1991,** and are advised to read the Appendix for the proper procedures. Such comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

North Star Communications
Radio Station KQEX(FM)
P.O. Box 291
Fortuna, CA 95540

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-177

In the Matter of

Amendment of Section 73.202(b), RM-7737
Table of Allotments,
FM Broadcast Stations.
(Orland, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 17, 1991; Released: June 25, 1991

Comment Date: August 16, 1991
Reply Comment Date: September 3, 1991

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Edward E. Abramson ("petitioner"), permittee of Station KXHM(FM), Channel 293A, Orland, California, requesting the substitution of Channel 294B1 for Channel 293A and modification of his construction permit to specify operation on the higher powered channel. Petitioner stated his intention to apply for Channel 294B1, if allotted to Orland.

2. We believe the public interest would be served by proposing the substitution of Channel 294B1 for Channel 293A at Orland, California, since it could provide the community with a wide coverage area FM service. Channel 294B1 can be allotted to Orland in conformity with the minimum distance separation requirements of the Commission's Rules at the petitioner's specified site.[1] As requested, we also propose to modify the petitioner's construction permit for Station KXHM(FM) to specify operation on Channel 294B1 in lieu of Channel 293A. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 294B1 at Orland.

3. Accordingly, in order to provide Orland with an expanded coverage area FM service, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the community listed below, as follows:

	Channel No.	
City	Present	Proposed
Orlan, California	293A	294B1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **August 16, 1991,** and reply comments on or before **September 3, 1991** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Eric S. Kravetz, Esq.
Brown, Finn & Nietert
1920 N Street, N.W.
Suite 660
Washington, D.C. 20036

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] Coordinates for proposed Channel 294B1 at Orland are 39-45-40 and 122-22-20.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-178

In the Matter of

Amendment of Section 73.202(b), RM-7141
Table of Allotments,
FM Broadcast Stations.
(Miami Beach, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 17, 1991; Released: June 25, 1991

Comments: August 16, 1991
Reply Comments: September 3, 1991

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Gilmore Broadcasting Corporation ("petitioner"), licensee of Station WLVE, Channel 230C1, Miami Beach, Florida, requesting the substitution of Channel 230C for Channel 230C1, and the modification of its license to specify operation on Channel 230C. Petitioner states that it will apply for Channel 230C, if allotted.

2. An engineering analysis reveals that Channel 230C can be substituted for Channel 230C1 in compliance with the Commission's minimum distance separation requirements without a site restriction.[1] As requested, we shall also propose to modify the license for Station WLVE(FM), Miami Beach to specify operation on Channel 230C. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require that the petitioner demonstrate the availability of an additional equivalent channel at Miami Beach.

3. In view of the fact that Station WLVE(FM) could expand its service area, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Miami Beach, Florida	230C1, 235C	230C, 235C

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **August 16, 1991,** and reply comments on or before **September 3, 1991,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John C. Quale
Edward A. Yorkgitis, Jr.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(Attorney for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] The coordinates are North Latitude 25-47-18 and West Longitude 80-07-48.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-529

In the Matter of

Amendment of Section 73.202(b), RM-7440
Table of Allotments,
FM Broadcast Stations.
(Waupun and Omro,
Wisconsin)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 14, 1991; Released: June 26, 1991

By the Chief, Allocations Branch:

1. At the request of Midwest Dimensions, Inc. ("petitioner"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 6592 (1990), proposing the reallotment of Channel 258C2 from Waupun to Omro, Wisconsin, and modification of the construction permit for Station WPKR(FM), Channel 258C2, to specify Omro as its community of license. Petitioner filed comments stating its intention to apply for the channel at the new community. No other comments were received.

2. We believe the public interest would be served by reallotting Channel 258C2 from Waupun to Omro, Wisconsin, and modifying Station WPKR(FM)'s construction permit to specify Channel 258C2 at Omro. Petitioner has shown that the reallotment of Channel 258C2 to Omro will result in a preferential arangement of allotments. Omro (population 2,763)[1] would receive its first local aural transmission service. In addition, Waupun (population 8,132) would continue to receive local transmission service from Station WMRH(AM).[2]

3. Channel 258C2 can be allotted to Omro at the petitioner's current transmitter site consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, as Station WPKR(FM) places a 70 dBu signal over the entire community of Omro from the site specified in its construction permit (BMPH-890810ID).[3] Channel 258C2 is short-spaced to Channel 257A, Station WOWN, Shawano, Wisconsin. However, Station WOWN was ordered to Channel 257C3 in MM Docket No. 89-511. *See* 5 FCC Rcd 5268 (1990). Since the allotment at Omro is contingent on the licensing of Station WOWN on the new channel, final licensing of Station WPKR(FM) at Omro may be delayed until the license grant occurs at Shawano. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the construction permit for Station WPKR(FM) to specify Omro, Wisconsin, as its community of license on Channel 258C2, in lieu of its present use at Waupun, Wisconsin.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 12, 1991,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Waupun, Wisconsin	---
Omro, Wisconsin	258C2

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Station WPKR(FM) IS MODIFIED to specify operation on Channel 258C2 at Omro, Wisconsin, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in the construction permit (BMPH-890810ID) except the community, as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301); and

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with its construction permit (BMPH-890810ID) except for the community as specified above and a license application (FCC Form 302) is filed within ten (10) days of commencement of program tests.

6. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Notice* to the following:

Wheeler Broadcasting, Inc.
1456 East Green Bay Street
Shawano, Wisconsin 54116
(Licensee of Station WOWN)

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

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[1] Population figures are taken from the 1980 U.S. Census.

[2] Petitioner is also the licensee of AM Station WMRH(AM), which is licensed to Waupun. An application for assignment of license to BBK Broadcasting, Inc. was granted on June 8, 1990 (BAL-900413EA).

[3] Coordinates for Channel 258C2 at Omro are 43-50-51 and 88-51-31.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-174

In the Matter of

Amendment of Section 73.202(b), RM-7728
Table of Allotments,
FM Broadcast Stations.
(Goliad, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 14, 1991; Released: June 26, 1991

Comment Date: August 19, 1991
Reply Comment Date: September 3, 1991

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Alco Communications ("petitioner") requesting the allotment of Channel 240A to Goliad, Texas, as the community's first local FM service. Petitioner states that it will apply for the channel, if allotted.

2. Petitioner states that Goliad is a community of "substantial size" and is listed in the Rand McNally Commercial Atlas.[1] In addition, petitioner notes that Goliad is the county seat of Goliad County, Texas, and its proposed allotment would provide the entire county with its first aural transmission service.

3. We believe the public interest would be served by proposing the allotment of Channel 240A to Goliad, Texas, since it could provide the community with its first local FM service. Channel 240A can be allotted to Goliad in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.7 kilometers (2.3 miles) west to avoid a short-spacing to the proposed Class C1 upgrade of Station KXGJ(FM), Channel 241C2, Bay City, Texas.[2]

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Goliad, Texas	--	240A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **August 19, 1991,** and reply comments on or before **September 3, 1991,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Mark Fields, Esq.
Miller & Fields
Post Office Box 33003
Washington, D.C. 20033
(Counsel for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 632-6302. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

[1] According to the 1980 U.S. Census, Goliad has a population of 1,990 persons.
[2] The coordinates for Channel 240A at Goliad are North Latitude 28-40-23 and West Longitude 97-25-40.

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-175

In the Matter of

Amendment of Section 73.202(b), RM-7720
Table of Allotments,
FM Broadcast Stations.
(Ravenswood and Williamstown,
West Virginia)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 14, 1991; Released: June 26, 1991

Comment Date: August 19, 1991
Reply Comment Date: September 3, 1991

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Mediacom, Inc. ("petitioner"), licensee of Station WRZZ, Channel 291A, Ravenswood, West Virginia, requesting the reallotment of Channel 291A to Williamstown, West Virginia, and the modification of its license to specify Williamstown as its community of license. Petitioner failed to state its intention to apply for the channel, if allotted, and must do so in comments responsive to this *Notice*.

2. Petitioner submits that the reallotment of Channel 291A to Williamstown will provide the community with its first local aural transmission service. The proposed 60 dBu contour when licensed to Williamstown will cover a population of 163,067, an approximate 300 percent increase in the current 60 dBu contour which encompasses 58,225 persons. Petitioner asserts that Ravenswood has an AM service, and that the removal of Station WRZZ-FM from Ravenswood would not deprive that community of its only local aural transmission service.

3. We believe the proposal warrants further consideration since it could provide Williamstown (population 3,095)[1] with its first local aural transmission service. The proposal would not deprive Ravenswood (population 4,126) of its only local aural transmission service. Furthermore, the reallotment of Channel 291A at Williamstown is mutually exclusive with the present allotment at Ravenswood. Channel 291A can be allotted to Williamstown in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.6 kilometers (4.7 miles) southwest to accommodate petitioner's desired transmitter site.[2] As requested, we also propose to modify petitioner's license for Station WRZZ to specify operation on Channel 291A at Williamstown. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 291A at Williamstown or require the petitioner to demonstrate availability of an additional equivalent class channel. In addition, since Williamstown is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Ravenswood, West Virginia	291A	--
Williamstown, West Virginia	--	291A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **August 19, 1991,** and reply comments on or before **September 3, 1991,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Robert L. Olender, Esq.
Baraff, Koerner, Olender & Hochberg, P. C.
5335 Wisconsin Ave., N.W., Suite 300
Washington, D.C. 20015
(Counsel for Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed

[1] Population figures are from the 1980 U.S. Census.
[2] The coordinates for Channel 291A at Williamstown are North Latitude 39-20-38 and West Longitude 81-29-48.

Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-179

In the Matter of

Amendment of Section 73.202(b), RM-7734
Table of Allotments,
FM Broadcast Stations.
(Bixby, Oklahoma)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 17, 1991; Released: June 26, 1991

Comment Date: August 19, 1991
Reply Comment Date: September 3, 1991

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by John M. Singer ("petitioner") requesting the substitution of Channel 287C3 for Channel 287A at Bixby, Oklahoma, and the modification of his construction permit for Station KBXT-FM. Petitioner states that he will apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 287C3 for Channel 287A at Bixby, Oklahoma, because it could provide the community with a wide coverage area FM service. Channel 287C3 can be allotted to Bixby in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[1] As requested, we also propose to modify Station KBXT's construction permit to specify operation on Channel 287C3. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 287C3 at Bixby or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Bixby, Oklahoma	287A	287C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **August 19, 1991,** and reply comments on or before **September 3, 1991,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Cary S. Tepper, Esq.
Putbrese, Hunsaker & Ruddy
6800 Fleetwood Road, Suite 100
P.O. Box 539
McLean, Virginia 22101
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] The coordinates for Channel 287C3 at Bixby are North Latitude 35-56-30 and West Longitude 95-52-48.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-616

In the Matter of

Amendment of Section 73.202(b),	RM-7554
Table of Allotments,	
FM Broadcast Stations.	
(Cold Spring and Litchfield,	
Minnesota)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 17, 1991; Released: June 26, 1991

By the Chief, Allocations Branch:

1. At the request of Litchfield Broadcasting Corp. ("petitioner") the Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 7598 (1990), proposing the reallotment of Channel 235C2 from Litchfield to Cold Spring, Minnesota, and modification of the license for Station KMXK-FM, Channel 235C2, to specify Cold Spring as its community of license. Petitioner filed comments stating its intention to apply for the channel at the new community. No other comments were received.

2. We believe the public interest would be served by reallotting Channel 235C2 from Litchfield to Cold Spring, Minnesota, and modifying Station KMXK-FM's license to specify Channel 235C2 at Cold Spring. Petitioner has shown that the reallotment of Channel 235C2 to Cold Spring will result in a preferential arrangement of allotments. Cold Spring (population 2,294)[1] would receive its first local aural transmission service. In addition, Litchfield (population 5,904) will continue to receive local transmission service from Station KQIV(AM).

3. Channel 235C2 can be allotted to Cold Spring at the petitioner's current transmitter site consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, as Station KMXK-FM currently places a 70 dBu signal over the entire community of Cold Spring.[2] In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license for Station KMXK-FM to specify Cold Spring, Minnesota, as its community of license on Channel 235C2, in lieu of its present use at Litchfield, Minnesota.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 12, 1991** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Cold Spring, Minnesota	235C2
Litchfield, Minnesota	---

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the license of Station KMXK-FM, IS MODIFIED to specify operation on Channel 235C2 at Cold Spring, Minnesota, subject to the following conditions:

(a) nothing contained herein shall be construed as authorizing any change in the license (BLH7137) except the community, as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301); and

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with its license (BLH7137) except for the community as specified above and a license application (Form FCC 302) is filed within ten (10) days of commencement of program tests.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] Population figures are taken from the 1980 U.S. Census.
[2] Coordinates for Channel 235C2 at Cold Spring are 45-23-53 and 94-25-15.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-180

In the Matter of

Amendment of Section 73.202(b), RM-7699
Table of Allotments,
FM Broadcast Stations.
(Seabrook, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 17, 1991; Released: June 26, 1991

Comment Date: August 19, 1991
Reply Comment Date: September 3, 1991

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by KRTS, Inc. ("petitioner"), licensee of Station KRTS(FM), Seabrook, Texas, requesting the substitution of Channel 221C1 for Channel 221C2 at Seabrook and the modification of its license to operate on the higher powered channel. Petitioner states that it will apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 221C1 for Channel 221C2 at Seabrook, Texas, since it could provide the community with a wider coverage area FM service. Channel 221C1 can be allotted to Seabrook in compliance with the Commission's minimum distance separation requirements with a site restriction of 40 kilometers (24.8 miles) southwest at petitioner's requested site.[1] In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 221C1 at Seabrook or require the petitioner to demonstrate the availability of an additional equivalent class channel.

3. Our engineering analysis reveals that the 1 mV/m contour of requested Channel 221C1 at Seabrook would overlap the Grade B contour of Station KFDM(TV), Channel 6, Beaumont, Texas. Petitioner has presented requested preclusion studies. The studies indicate that new preclusion would be caused on Channels 218A, 218C3, 220A, 220C3 and 220C2. In accordance with the *First Report and Order* in MM Docket No. 86-144, 52 FR 8259, March 17, 1989, petitioner should provide a preclusion study demonstrating the impact of allotting Channel 221C1 to Seabrook on the availability of Class A, C3, C2, C1 and C noncommercial educational allotments on Channels 218, 219 and 220. Guidelines for the preclusion study are as follows:

(a) The preclusion study should be done on each affected channel for each possible class of noncommercial FM station (that is, A, B1 and B in Zones I and I-A or A, C3, C2, C1 and C in Zone II).

(b) For each class of noncommercial educational FM station, maximum power and antenna height and omnidirectional operation should be assumed.

(c) Preclusion should be considered to occur only if the noncommercial educational FM station would be prevented by the upgrade, and is not already precluded either by the existing Channel 221 station that is the subject of the proposal or by other commercial or noncommercial educational FM stations.

(d) Preclusion should be determined both inside and outside the Channel 6 Grade B contour. While the existence of the Channel 6 station imposes a burden on noncommercial educational FM applicants, determination of the preclusive effect of the Channel 6 station can be complicated and may be dependent on the particular transmitter site selected. Therefore, the initial preclusion area determination should be done without considering the Channel 6 station's impact. The Channel 6 impact can be included at a later stage of study, if necessary.

(e) Within any identified preclusion area, significant communities, normally those with a population in excess of 1,000, should be identified. Existing local noncommercial educational FM stations in the precluded communities should be listed.

(f) Optionally, if precluded communities without local noncommercial educational FM service are found, additional information can be provided, including:

(i) Availability of noncommercial educational FM service from stations licensed to nearby communities;

(ii) Availability of other channels for a noncommercial educational FM station in the precluded community (include consideration of Channel 6 station impact); and

(iii) Impact of Channel 6 on noncommercial educational FM channel availability in the community. If a precluded community is a reasonable distance beyond the Grade B contour of the Channel 6 station, then it is possible that the Channel 6 station has no effect on the availability of a particular class of noncommercial educational FM station in that community. The noncommercial educational FM channel that is closest to Channel 6 in frequency, and therefore more likely to be affected, is Channel 201. Preclusion in a community that is beyond the Channel 6 impact distance is not significant. The appropriate impact distance for Class C stations is found in Table A of Section 73.525(a)(1) of the Commission's Rules. Lesser distances are appropriate for other classes of noncommercial educational FM stations. For convenience, the distances have been calculated for Channel 201 and are as follows:

[1] The coordinates for Channel 221C1 at Seabrook are North Latitude 29-19-11 and West Longitude 95-19-44.

Class	Distance from Channel 6 station
A	165 kilometers
B1	189 kilometers
B	207 kilometers
C3	189 kilometers
C2	207 kilometers
C1	234 kilometers
C	265 kilometers

Precluded communities within these distances from the Channel 6 station generally constitute a negative factor to be weighed against the public interest gains sought through the upgrade.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Seabrook, Texas	221C2	221C1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **August 19, 1991,** and reply comments on or before **September 3, 1991,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Michael R. Gardner, Esq.

Law Offices of Michael R. Gardner, P.C.

1150 Connecticut Ave., N.W., Suite 710

Washington, D.C. 20036

(Counsel for Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Termination of the 1986 ARPM
Transition Plan for
Average Schedule Companies

ORDER

Adopted: May 24, 1991; Released: June 26, 1991

By the Commission:

I. INTRODUCTION

1. In this Order, we deny the ICORE companies' Application for Review[1] of a Common Carrier Bureau Order denying an ICORE motion to strike a report filed by the National Exchange Carrier Association ("NECA").[2]

II. BACKGROUND

2. The Part 69 rules,[3] which were adopted shortly before the AT&T divestiture, established an association to perform some of the functions that AT&T had been performing for the pre-divestiture telephone company partnership. Those functions included the administration of the average schedule settlements system that the telephone industry had established to compensate many of the telephone companies for their participation in the transmission of interstate calls. The Part 69 rules also expanded the Commission's role in that process by requiring the association, which became NECA, to either submit annual average schedule revisions for Commission approval or to certify that revisions are not required.[4]

3. In 1986 the Commission approved average schedule revisions that altered the basic compensation method for the use of common or subscriber lines to make average schedule compensation more consistent with the methods that were used to compensate cost companies.[5] That revision included a four year transition plan to provide supplemental payments to certain companies that would experience large reductions in average schedule payments as a result of the change in compensation methods. When NECA proposed that transition plan, NECA stated that it would conduct a study to determine whether additional transitional relief should be provided after the four year period ending May 31, 1990.

4. On August 16, 1989, NECA filed a Report based on the study NECA had described in 1986. That Report stated that the transition plan had accomplished its purpose and there is no need to extend it. On September 26, 1989, ICORE filed a petition to strike the NECA Report. The *Bureau Order* denied that petition, stating that the 1986 NECA transition plan terminated on May 31, 1990.[6] The Bureau found that the Commission's *Average Schedule Order* approved supplemental transition payments for a four year period and that the transition plan ended, by its own terms, on May 31, 1990.[7] The Bureau stated that NECA's recommendation against additional transitional support did not constitute a modification of the Commission-approved transition plan and, accordingly, did not constitute a modification of the formula that provides disbursements to average schedule companies.[8] The Bureau observed that the NECA Report instead merely provided advance notice that NECA would not propose any additional transition payments in its next average schedule revisions proposal.[9] The Bureau denied the petition to strike and advised ICORE that ICORE should present its views on the need for additional transition payments in the proceeding to examine the average schedule revisions that were to be filed in December 1989 if ICORE believed that additional supplemental payments were warranted.[10]

5. In December, 1989 NECA filed proposed average schedule revisions that did not include any additional transitional payments. The Bureau approved the revisions with modifications that would provide some transitional payments to some companies under certain circumstances.[11]

6. On January 26, 1990, the ICORE companies filed an application for review of the *Bureau Order* contending: (1) that the transition plan did not end on May 31, 1990; (2)

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[1] Application for Review filed January 26, 1990 by City of Brookings Municipal Telephone Co., Dunnell Telephone Co., Kadoka Telephone Co., Jefferson Telephone Co., Mount Rushmore Telephone Co., North State Telephone Co., Northwest Iowa Telephone Co., Prairie Grove Telephone Co., Summit Telephone and Telegraph Co. of Alaska, Union Telephone Co. (collectively, "ICORE" or the "ICORE companies").

[2] NECA Study of ARPM [Average Revenue Per Message] Transition Plan and Petition of National Utilities, Inc. For Relief For High Cost Average Schedule Companies in Alaska, 5 FCC Rcd 84 (1989)(hereinafter, "*Bureau Order*").

[3] 47 C.F.R. Part 69.

[4] 47 C.F.R. § 69.606(b)(1984).

[5] In the Matter of MTS and WATS Market Structure: Average Schedule Companies, 103 FCC 2d 1017 (1986)(hereinafter, "*Average Schedule Order*"); *remanded sub nom. City of Brookings v. FCC*, 822 F. 2d 1153 (D.C. Cir. 1987). In *City of Brookings*, the court required further explanation with respect to: (1) the Commission's conclusion that NECA's settlement schedules were an improvement over the 1983 average schedules; (2) the Commission's conclusion that 15.9 messages per access line approximated an 85% non-traffic sensitive cost level for average schedule companies; (3) the reason that the Commission had not considered an alternative methodological approach raised in the record.

[6] *Bureau Order* at 85.

[7] *Id.* All payments to average schedule companies by NECA must be approved by the Commission. *See* note 8, *infra*.

[8] *Id. See, generally*, 47 C.F.R. § 69.606(a) ("Payments [to average schedule companies] shall be made in accordance with a formula approved or modified by the Commission...."). The revisions to the average schedule formula that were proposed by NECA (*see, generally*, 47 C.F.R. § 69.606(b)) included the transition plan that is the subject of ICORE's Application for Review.

[9] *Bureau Order* at 85.

[10] *Id.*

[11] In the Matter of NECA's Proposed Revisions to the Average Schedules; Consolidated Telephone Company's Petition for Relief; Northwest Iowa Telephone Company Request for Supplemental Payments, 5 FCC Rcd 4068, 4072-75 (Com. Carrier Bur.

that modifying the transition plan to terminate on May 31, 1990 would constitute rulemaking; and (3) that termination on May 31, 1990 would therefore be procedurally improper under the Administrative Procedure Act ("APA") and our rules.[12] NECA opposed ICORE's application for review, stating that the transition expired, by its own terms, on May 31, 1990.

III. DISCUSSION

7. Procedurally, the *Bureau Order* concluded that ICORE's concerns about NECA's Report were misplaced and that ICORE's request for an extension of the transition payments should be presented after NECA filed proposed revisions to the average schedules that did not include supplemental transition payments.[13] The application for review does not address that conclusion. The petition to strike would not have been an appropriate procedural device even if we accepted ICORE's contentions. Moreover, ICORE's description of the nature and effect of the transition plan is erroneous.

8. ICORE contends that the Commission-approved transition plan did not terminate after four years but, instead, was to continue without limitation[14] until the Commission issued an order, following a notice of proposed rulemaking, that terminated the transition.[15] That contention is incorrect. NECA proposed a four year transition, beginning June 1, 1986, and the Commission approved that limited transition.

9. Section 69.606(a) of our rules states that no disbursements of interstate revenues shall be made by NECA to average schedule companies without Commission approval.[16] The Commission-approved transition plan stated: (1) that it would be in effect for a four year period;[17] and (2) that NECA would undertake additional study to recommend how certain transitioning average schedule companies should be treated after the fourth year.[18] The Order approving the transition plan observed that the transition payments would be non-recurring, and that transition payments were to be made over a four year period.[19] The Commission expressly rejected ICORE's request for a transition period that exceeded four years.[20] On reconsideration, the Commission stated again that the transition would conclude at the end of four years.[21] ICORE, after participating in these proceedings, filed a petition with the United States Court of Appeals for the District of Columbia Circuit seeking review, *inter alia*, of the Commission's approval of the transition plan. While remanding to the Commission on certain issues, the court rejected ICORE's argument that the four year transition period was unfair.[22]

10. ICORE now contends that the limitation on reductions in settlements to $5.00 per access line over a four year period requires that supplemental transition payments continue at that level thereafter.[23] ICORE's contention is incorrect. The transition plan's provision that reductions would not exceed $5.00 per access line during a four year period does not override the Commission's determination that the transition would expire at the end of four years.[24]

11. The transition plan ended, by its own terms, on May 31, 1990. NECA stated that it would undertake a study to determine whether any additional payments would be necessary after the conclusion of the four year transition period. NECA subsequently recommended against further transition payments. The Bureau provided carriers with an opportunity to seek additional payments, and then ordered additional payments under certain circumstances.[25] We conclude that the *Bureau Order* correctly stated that the 1986 transition plan terminated in May 1990. Because the transition plan approved by the Commission terminated at the end of the fourth year, we need not reach ICORE's remaining contentions. We therefore deny ICORE's application for review.

IV. ORDERING CLAUSE

12. ACCORDINGLY, IT IS ORDERED THAT the Application for Review, filed by the ICORE companies on January 26, 1990, IS DENIED for the reasons stated herein and for the reasons that were stated in the *Bureau Order*.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

1990)(hereinafter, "*1990 Average Schedule Revisions Order*"). In that Order, the Bureau permitted companies receiving 1986 transition payments to continue to receive transition payments, at least temporarily, if they choose to assess whether conversion to cost study status is desirable. *See id.*

[12] ICORE Application for Review at 2-15.

[13] *Bureau Order* at 85.

[14] ICORE Application for Review at 8-14.

[15] *Id.* at 3-14.

[16] 47 C.F.R. § 69.606(a).

[17] NECA Modification of Average Schedules (Sept. 16, 1985) at 19, 20, Appendix A at 12.

[18] *Id.* at 19 n. 11.

[19] *Average Schedule Order* at 1022, 1025.

[20] *Id.* at 1026. ICORE had requested a substantially longer transition period.

[21] In the Matter of MTS and WATS Market Structure: Average Schedule Companies, 3 FCC Rcd 834 (1986). *See also id.* at 840 n. 12 ("NECA is studying companies that would experience a reduction in excess of $5.00 per access line per month in order to recommend appropriate treatment of those companies *at the conclusion of the transition period.* ")(Emphasis supplied.)

[22] *City of Brookings*, 822 F.2d at 1159-61, 1170-71.

[23] ICORE Application for Review at 3-5.

[24] *See* notes 17-21 *supra* and references cited therein. ICORE appears to have understood this at an earlier stage of the proceeding. *See, e.g.*, ICORE Comments (Dec. 6, 1985) at 13-14, quoted at n.22 of ICORE's Application for Review of the *Bureau Order* at 6 n.27 ("The Commission is asked to approve the new average schedules with *no clue as to how these 35 companies will be treated after the fourth step.*"); ICORE Reply Comments (Jan. 6, 1986) at 2, quoting at n. 22 of ICORE's Application for Review of the *Bureau Order* at 6 n. 27 (" *Even at the end of this transition, many small average schedule companies would still face major reductions under an as-yet-unspecified transition.*").

[25] *Bureau Order* at 85, *1990 Average Schedule Revisions Order* at 4072-75.

Before the
Federal Communications Commission
Washington, D.C. 20554

(CORRECTED)

In re:

FCVS COMMUNICATIONS (WACH) CSR-3464

Petition for Special Relief

MEMORANDUM OPINION AND ORDER

Adopted: June 13, 1991; Released: June 27, 1991

By the Chief, Video Services Division, Mass Media Bureau:

1. On September 4, 1990, FCVS Communications (hereinafter "WACH"), licensee of Television Broadcast Station WACH (Ind., Channel 57), Columbia, South Carolina, filed a petition for special relief seeking a ruling that WACH is significantly viewed in nine South Carolina counties. WACH's petition is opposed by Columbia Television Broadcasters, Inc. (hereinafter "WOLO-TV"), licensee of Station WOLO-TV (ABC, Channel 25), Columbia, South Carolina, and by Charleston TV, Inc. (hereinafter "WCBD-TV"), licensee of Station WCBD-TV (ABC, Channel 2), Charleston, South Carolina, and WACH has replied.

2. In 1972, the Commission adopted a comprehensive regulatory scheme for cable television. *Cable Television Report and Order*, 36 FCC 2d 143, *recon.*, 36 FCC 2d 326 (1972). As part of this regulatory scheme, the Commission limited the number of distant signals a cable system could import from outside of its market. Exemptions to these limits, however, were made for both significantly viewed signals and for specialty stations. A signal is considered to be significantly viewed if it meets certain designated minimum viewership levels off-the-air. A station was considered to be a specialty station if it programmed a designated minimum amount of foreign-language, religious, or automated programming.[1] When the Commission deleted its distant signal carriage limitations in 1982, the Commission also deleted its rule defining a specialty station. This category of stations was no longer needed because there were no longer any rules limiting signal carriage from which exemptions on this basis were needed. *Report and Order in Docket Nos. 20988 and 21284*, 79 FCC 2d 663 (1980), *aff'd sub nom. Malrite TV of New York, Inc. v. FCC*, 652 F. 2d 1140 (2d Cir. 1981), *cert. denied*, 454 U.S. 1143 (1982). The Commission continues to utilize the significantly viewed status of signals for various purposes, such as exemption from the Commission's program exclusivity rules. 47 C.F.R. §§76.92(f), 76.156(a). On the other hand, the Copyright Office has continued to recognize specialty status for purposes of determining royalty payment rates, the carriage of specialty stations by cable systems incurring lesser fees than the carriage of other distant stations.

3. In establishing the category of significantly viewed stations, the Commission published a nationwide list, county-by-county, of those stations initially deemed to be significantly viewed. *Reconsideration of the Cable Television Report and Order*, 36 FCC 2d at 378-463 app. B. Stations not included in this list may be added in one of two ways. A station may demonstrate that it meets the requisite viewership levels utilizing current system-specific or community-specific data. 47 C.F.R. §76.54(b). Alternatively, a "new" station -- one not included in the surveys, which established the 1972 list -- may utilize county-wide data, provided that such data is from the station's first three years of operations. 47 C.F.R. §76.54(d). For purposes of this rule, the Commission has extended "new" station status to stations shifting from subscription or noncommercial status to commercial status after the initial survey period, and also to stations which have undergone very extensive technical improvements so as to increase significantly the stations' predicted coverage.

4. WACH began operation on October 2, 1981 (as Station WCCT-TV), broadcasting largely a religious programming format. WACH operated with maximum visual effective radiated power of 637 kilowatts (63.7 kW aural) and height above average terrain of 582 feet. On May 11, 1988, WACH was acquired by its present licensee, and, within a month, instituted a new, non-religious program schedule. WACH also concluded an affiliation agreement with the Fox Broadcasting Company, and upgraded the station's technical facilities, increasing the effective visual radiated power of the station to 5,000 kilowatts (aural 500 kW) and height above average terrain to 193 meters (633.04 feet), allowing WACH to provide Grade B service to Orangeburg, Newberry, and portions of Bishopville, South Carolina. In view of both the station's technical upgrades and also of the station's switch to a "general market independent station" from a specialty station, WACH contends that it should be considered a "new" station for purposes of determining its status as significantly viewed pursuant to §76.54 of the Rules, citing *Independent Broadcasting Company (KOLR-TV)*, 54 RR 2d 712 (1983), and *Calvert TeleCommunications Corporation d / b / a CALTEC*, 63 FCC 2d 1022 (1977). Consideration as a "new" station, WACH notes, would allow it to demonstrate its status as significantly viewed utilizing current county-wide data, rather than current community-specific data or county-wide data from the period 1981-1984, the station's first three years of operation as WCCT-TV.

5. In support of its request to be declared to be significantly viewed in Calhoun, Fairfield, Kershaw, Lee, Lexington, Newberry, Orangeburg, Richland, and Sumter Counties, South Carolina, WACH states that it meets the definition of an independent station,[2] and thus, pursuant to §76.5(i) of the Commission's Rules, the necessary viewership levels that WACH must achieve to be declared to be significantly viewed are a 2% share of total viewing hours and a net weekly circulation of 5%. WACH submits the following data from Arbitron's *1990 County Coverage Surveys, Cable Controlled* :

County	Share of Total Viewing Hours	Net Weekly Circulation
Kershaw	10	52
Lexington	14	60
Newberry	3	16
Orangeburg	3	15
Richland	19	72
Sumter	3	30

This data is derived from surveys taken in May, July, and November 1989 and February 1990. WACH also submits a letter dated August 23, 1990, from an Arbitron account executive providing the following survey data from February and May 1990:

County	Share of total Viewing hours	Net Weekly Circulation
Calhoun	8.9	41.3
Fairfield	5.7	62.2
Lee	5.0	28.3

Accordingly, states WACH, in each case it has met the necessary viewership levels to be declared to be significantly viewed.

6. WOLO-TV, in opposition to WACH, argues that WACH's technical improvements are not substantial enough to warrant treating the station as "new". Though WACH may have increased its power eight-fold, contends WOLO-TV, WACH's antenna height increase is only about 10%. In both cases cited by WACH, the technical improvements were far more extensive, states WOLO-TV, and in neither case was the station's treatment as "new" predicated on format or programming changes. In any event, contends WOLO-TV, §76.54(d) of the Rules requires that survey data be submitted for three separate periods, and WACH has submitted data only for February and May 1990, which is insufficient.

7. WCBD-TV opposes WACH's petition only with respect to Calhoun, Lee, Orangeburg, and Sumter Counties.[3] WCBD-TV notes that no station has ever been treated as "new" by the Commission merely due to programming changes. To do so, WCBD-TV contends, would undermine the stability of the standards for stations' significantly viewed status, and it would create the likelihood of further subjectively based requests for treatment as "new" by stations which modify staff size, news/public affairs commitments, hours of operation, etc. Citing *American Valley Broadcasting Company (WAFF)*, Cable Television Actions Report No. 3253 (released December 7, 1989), WCBD-TV argues that only significant technical improvements are grounds for "new" station status. However, notes WCBD-TV, the improvements made by WACH have increased that station's Grade B coverage area by only 22.2% (11,489 square kilometers to 14,041 square kilometers). This, contends WCBD-TV, is clearly insufficient. In *Independent Broadcasting Company* and in *CALTEC*, both *supra*, cited by petitioner, the Grade B coverage area increase was 100% and 41%, respectively, notes WCBD-TV, while in *American Valley Broadcasting Company, supra*, the Commission found a 25.5% increase to be insufficient justification for treatment as a "new" station. Accordingly, argues WCBD-TV, WACH's petition must be denied.

8. In reply, WACH argues that unlike the station in question in *American Valley Broadcasting Company, supra*, WACH has done more than merely increase its total population and geographic area served (by 16.64% and by 22.2%, respectively). Of greatest importance, WACH contends, is that it has changed its programming to compete more effectively in its market and has in fact significantly increased its market audience. In addition, WACH has secured carriage on additional cable systems serving Batesburg, Newberry, and Orangeburg, South Carolina. WACH also notes that it was not on the air at the time of the Commission's initial determination of significantly viewed stations, *Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326, 378-463 app. B (1972), whereas both WOLO-TV and WCBD-TV, which are entrenched ABC affiliates, have benefitted from such status for years. Failure to treat WACH as a "new" station, petitioner contends, would "stack the deck" against WACH, and it would be contrary to the spirit of *Spartan Radiocasting Company v. FCC*, 619 F. 2d 314 (4th Cir. 1980).[4]

9. Initially we note that *Spartan Radiocasting Company v. FCC, supra*, cited by petitioner, addressed the adequacy of notice in a Rule Making proceeding, and the applicability of our nonduplication rules to significantly viewed signals, neither of which points is at issue in this proceeding. In addition, WACH misapprehends the underlying rationale of what constitutes a "new" station for purposes of §76.54 of the Rules. In those cases in which we have permitted stations already on the air to be treated as "new" for such purposes, the station in question did more than merely seek to offer programming thought to be more attractive to its existing potential audience base. Rather, the station underwent very extensive technical improvements which significantly increased its coverage potential, *e.g., Independent Broadcasting Company, supra*; *CALTEC, supra*, or, alternatively, the station switched from an STV or non-commercial mode of operations to a commercial mode of operations, *e.g., HR Broadcasting Corp. of Milwaukee, Inc. (WCGV-TV)*, Cable Television Actions Report No. 3212 (released April 10, 1989) (STV); *Golden West Broadcasters of Oklahoma, Inc. (KAUT)*, Cable Television Actions Report No. 3110 (released September 8, 1987) (STV); *Blair Broadcasting of Oklahoma, Inc.* (KOKH-TV), Cable Television Actions Report No. 2800 (released October 14, 1983) (non-commercial), changes which altered the basic terms of providing its broadcast service.[5] Under neither line of precedents are WACH's changes of sufficient magnitude to warrant treatment as a "new" station. In those cases in which we have treated a station as "new" based upon significant technical improvements, these improvements have increased the station's Grade B coverage area by over 40%. In contrast, WACH has increased its Grade B coverage area by only 22.2%, which is clearly insufficient. *American Valley Broadcasting Company, supra; Taft Television Radio Company, Inc.*, 103 FCC 2d 883 (1986). With regard to its program modifications, WACH has merely decided to offer different programming to its existing potential audience base. Determining when changes in entertainment format are substantial enough to warrant categorization as a "new" station would reinvolve the Commission in subjective judgments, from which it has previously sought to extricate itself. *FCC v. WNCN Listeners Guild*, 450 U.S. 582 (1981). Moreover, we have previously established that a change in network affiliation and in non-network program offerings was insufficient to warrant an existing station's loss of significantly viewed status. *Boston Broadcasters, Inc.*, 42 FCC 2d 669 (1973). We see no reason today why a similar change in program content should warrant treatment as a "new" station for purposes of establishing significantly viewed status. *KXTX, Inc.*, 6 FCC

Rcd 68 (1990); *Nationwide Communications, Inc. (KITN), supra*. This does not treat WACH disparately with respect to WOLO-TV and WCBD-TV. Indeed, as a station that commenced operations in 1981, subsequent to the Commission's initial list of significantly viewed stations, *Reconsideration of the Cable Television Report and Order, supra*, WACH *is* a new station that may use county-wide data from its first three years of operation to establish significantly viewed status, pursuant to §76.54(d) of the Commission's Rules. However, WACH has not demonstrated that it has undergone changes of significant magnitude to be considered a "new" station yet again. WACH's current programming may make the station more widely viewed in its existing local market may make WACH a more popular station, but this is not the equivalent of being a "new" station.

10. Although we have determined that there are no grounds for treating WACH as a "new" station for purposes of demonstrating significantly viewed status, WACH may still demonstrate this status in accordance with §76.54 of the Rules. To do so, WACH must either submit current community-specific or system-specific data (pursuant to §76.54(b) of the Rules), or provide county-wide data from prior to October 2, 1984, (pursuant to §76.54(d) of the Rules). This WACH has not done. Accordingly, we cannot find WACH to be significantly viewed in Calhoun, Fairfield, Kershaw, Lee, Lexington, Newberry, Orangeburg, Richland, or Sumter Counties, South Carolina.

11. In view of the foregoing, we find that grant of WACH's petition is not in public interest.

12. Accordingly, IT IS ORDERED, That the petition for special relief (CSR-3464) filed September 4, 1990, by FCVS Communications IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

FOOTNOTES

[1] Former §76.5(kk) of the Rules defined a specialty station as: "A commercial television broadcast station that generally carries foreign-language, religious, and/or automated programming in one-third of weekly prime-time hours."

[2] An independent station is defined as "[a] commercial television broadcast station that generally carries in prime time not more than 10 hours of programming per week offered by the three major national television networks." 47 C.F.R. §76.5(l). WACH states that it does not present NBC, CBS, or ABC programming, but rather "it programs as an independent station, augmented by Fox network programming."

[3] WCBD-TV states that its Grade B coverage area includes portions of these counties, and therefore that WCBD-TV competes with WACH for audience and revenues in these counties. WCBD-TV does not oppose WACH's petition insofar as it pertains to Fairfield, Kershaw, Lexington, Newberry, and Richland Counties.

[4] WCBD-TV subsequently supplemented its opposition, citing the Commission's recent decision in *Nationwide Communications, Inc. (KITN)*, 6 FCC Rcd 52 (1990), to support WCBD-TV's argument that WACH's programming changes do not warrant treating WACH as a "new" station. WACH has not replied.

[5] In this regard, we note that noncommercial stations were simply not included in the original 1972 significant viewing list regardless of their share of circulation. Thus, they are inherently "new," insofar as the list and significant viewing process are concerned, when they change to commercial status.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CABLE TELEVISION TECHNICAL AND OPERATIONAL REQUIREMENTS — **MM Docket No. 91-169**

REVIEW OF THE TECHNICAL AND OPERATIONAL REQUIREMENTS OF PART 76, CABLE TELEVISION — **MM Docket No. 85-38**[1]

NOTICE OF PROPOSED RULE MAKING

Adopted: June 13, 1991; Released: June 27, 1991

Comment Date: September 17, 1991
Reply Comment Date: October 17, 1991

By the Commission:

I. INTRODUCTION

1. By this *Notice of Proposed Rule Making*, the Commission seeks comment on proposed new technical standards for cable television systems, focusing primarily upon the quality of the signal delivered to the cable subscriber's terminal. Part 76, Subpart K of the Commission's Rules and Regulations contains several sections that define technical standards applicable to cable systems.[2] The intent of the proposed rules, among other goals, is to define a basic technical quality of service cable subscribers can expect, as we stated in our report to Congress, *Report in MM Docket No. 89-600*, 5 FCC Rcd 4962 (1990) [hereinafter "*Cable Report* "]. This is an ongoing concern not only of this Commission, but also of local franchising authorities, who are empowered to consider "the quality of the operator's service, including signal quality," in the franchise renewal process. [3] The Commission's current technical standards have remained essentially unchanged for over a decade and a half. During this time, the cable industry has matured, competition from other video services has significantly increased, the television environment in the home has changed, and new technical problems have arisen that our standards do not yet address. Accordingly, we propose to reexamine and update our rules for all classes of cable channels. Our proposed rules are set forth in Appendix A.

II. BACKGROUND

2. Since 1972, the Commission has had technical standards to govern the video signal of cable channels retransmitting broadcast programming (*i.e.*, class I channels).[4] *Cable Television Report and Order*, 36 FCC 2d 143, 198-204, *aff'd in part and modified in part*, 36 FCC 2d 326, 359-364 (1972). At the outset, the Commission also permitted local franchising authorities to adopt and enforce stricter cable technical standards than the ones it promulgated. This resulted in a variety of different standards adopted by local authorities, which created a significant degree of confusion and inefficiency. Consequently, in 1974 the Commission preempted the authority of state and local governments to set more stringent standards than the Commission. *Report and Order in Docket No. 20018*, 49 FCC 2d 4170 (1974). In 1985, however, the Commission decided that it would no longer enforce these standards, but would retain them as voluntary guidelines that local authorities could include as requirements in their franchise agreements and could themselves enforce. The Commission's preemption of a local authority's power to adopt more stringent standards remained in effect. *Report and Order in MM Docket No. 85-38*, 102 FCC 2d 1372 (1985).

3. Although the Commission initially anticipated setting additional standards for class II, III and IV channels as the need developed, it ultimately determined that standards for class II through IV channels could stifle the development of services using these channels, and that competitive forces would be a far more effective regulator of service quality for these channels. The Commission therefore did not adopt any standards or guidelines for class II through IV channels and, to ensure that technical innovation proceeded without unnecessary impediment, the Commission also preempted local authorities from imposing any technical standards for these channels. *See Docket No. 20018*, 49 FCC 2d at 477-480.

4. In 1985, the Commission again declined to set standards (or guidelines) for class II through IV cable channels and continued to preempt local franchising authorities from doing so. Franchising authorities appealed the decision, arguing that this preemption, coupled with the absence of federal quality standards for these channels, made it impossible for them to perform an analysis of whether a franchise should be renewed adequate to meet their obligations under the Cable Communications Policy Act of 1984 (Cable Act). Finding merit in

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[1] In response to the *Further Notice of Proposed Rule Making in MM Docket No. 85-38*, 3 FCC Rcd 5966 (1988), the Commission received formal comments from twenty-one parties, informal comments from two parties, and reply comments from eight parties. We will treat these prior comments as part of the record in this new proceeding. New pleadings and comments citing both captioned dockets will be physically filed and recorded as filed in Mass Media Docket No. 91-169.

[2] *See* 47 C.F.R. §§ 76.601 *et seq.*

[3] 47 U.S.C. § 546(c)(1)(B).

[4] The Commission has defined four classes of cable television channels. Class I channels are used to relay to subscriber terminals television broadcast programs obtained off-the-air or by either microwave or direct connection to a broadcast station. Class II channels deliver to subscriber terminals non-encoded non-broadcast cable programming such as public access and cable originated services. Class III channels deliver to subscriber terminals either encoded video programming or signals that are intended for reception by equipment other than a television broadcast receiver (*i.e.*, non-video communications). Finally, class IV channels transmit signals of any type from a subscriber terminal to another point in the cable television system (thus providing two-way interactive capability). *See* 47 C.F.R. § 76.5(r)-(u).

this argument, the Court of Appeals for the District of Columbia Circuit remanded the case to the Commission. *City of New York v. FCC*, 814 F. 2d 720 (D.C. Cir. 1987), *aff'd*, 486 U.S. 57 (1988). Responding to the remand, the Commission launched a further rulemaking proceeding in 1988, proposing to extend the now voluntary technical guidelines for *video* signals carried on class I cable channels to cover *video* signals carried on class II and class III channels. *Further Notice of Proposed Rule Making in MM Docket No. 85-38, supra.* The Commission believed that the varied and experimental nature of *non-video* services carried on class III and class IV channels made defining standards for these channels difficult, if not impossible. It also stated its continuing concern that such standards would stifle further development of new uses of cable technology. Consequently, no standards were proposed for *non-video* signals carried on class III and IV channels.

5. Shortly thereafter, pursuant to § 623(h) of the Cable Act, the Commission issued a *Notice of Inquiry in MM Docket No. 89-600*, 5 FCC Rcd 362 (1989), to enable the Commission to develop a factual record to ascertain the concerns of consumers, television broadcasters, and other video service providers regarding the cable industry. Based upon this record,[5] the Commission issued its *Cable Report*, which it presented to Congress. Among the issues addressed in the *Cable Report* was technical cable service quality. The Commission found, based upon the evidence submitted in both *MM Docket No. 8538, supra*, and in *MM Docket No. 89-600, supra*, "that there is a pattern of technical problems with cable service." *Cable Report*, 5 FCC Rcd at 4990. The Commission further found "merit in the criticism of some municipal commenters that the standards are outdated and inadequate to assure subscribers a high quality picture." *Id.* at 5056. At the same time, the Commission reaffirmed its belief

> that uniformity of technical standards in the 27,000 communities with cable franchises is essential to prevent the inefficiency and confusion that threatened the cable industry during the period when local authorities (far fewer at that time) could set stricter standards than those promulgated by the Commission. Moreover, uniform standards would permit cable operators, program suppliers and equipment manufacturers to take advantage of any economies of scale that might otherwise be lost if differing technical standards force them to customize their services or equipment to meet the requirements of a myriad of jurisdictions. As the cities themselves recognize, federal standard setting could also save the local authorities the expense associated with developing their own standards.

Id. In the *Cable Report*, the Commission noted the ongoing inter-industry negotiations -- including the cable industry and franchising authorities -- on cable technical standards, stating its intent to:

> initiate an inter-industry advisory process, geared toward reaching consensus for revamping the specific standards for cable technical regulation, within the following framework:
>
> (a) The Commission intends to adopt mandatory technical standards for class I, II and III video signals.
>
> (b) The Commission will continue to preempt the power of local authorities to set technical standards for these signals more strict than the federally established ones.
>
> (c) As a practical matter, the Commission will continue to rely on local franchising authorities as the first line of enforcement; with mandatory standards, however, the Commission will have enforcement responsibilities.
>
> (d) For non-video transmissions carried on class III and IV channels, technical standards, to the extent they are necessary, should not be so restrictive as to stifle innovation and experimentation in this dynamically evolving area of new technology and service.

Id. at 5058-5059. We believe that, in view of the foregoing framework, it is appropriate to issue this *Notice of Proposed Rule Making* at the present time. [6]

III. DISCUSSION

6. It is our objective through this proceeding to establish technical standards which will ensure an acceptable quality of television service to cable subscribers on all relevant classes of cable channels. This will also enable franchising authorities to fulfill their statutory responsibilities.[7] As we stated in our *Report* to Congress, "technical standards for video transmissions should be adequate to enable a franchising authority to determine whether the signal quality of its franchisee's system overall merits franchise renewal." *Id.* at 5057. At the same time, we remain cognizant of the need to ensure that whatever standards we adopt do not impede technological advances and experimentation by the cable industry, in conformance with our concurrent statutory aims.[8] We believe that the standards we propose strike an appropriate balance in achieving these goals. Some of our proposed standards in fact eliminate existing guidelines, such as specific channel boundary requirements. Some retain existing guidelines as

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[5] The Commission received more than 180 comments and close to 70 reply comments. Extensive supplemental information was also requested and received, and field hearings in three different cities were conducted.

[6] Although we indicated in the *Cable Report* that we would issue a notice of proposed rule making "[o]nce a consensus agreement is reached among the interested parties, "*Cable Report*, 5 FCC Rcd at 5059, the cable industry and representatives of municipalities have been involved for over one year in inter-industry negotiations. The negotiations have not resulted in a consensus agreement. Although we continue to believe that "the best way to fashion effective technical standards is ... the completion of the ongoing interindustry negotiations in this area," *id.* at 5058, and would welcome any such development, we did not intend in the *Cable Report* to delay indefinitely Commission action, and we do not believe any further delay in the commencement of Commission action would serve the public interest.

[7] *See* 47 U.S.C. §§ 521(5), 546(c)(1)(B).

[8] *See* 47 U.S.C. § 521(4), (6).

standards, while others -- notably those regarding visual signal strength and electromagnetic noise problems -- we propose to enhance. We propose to add new standards generally regarding the delivery of color signals. In each case, we seek comments on our specific proposals, and any alternatives commenters may wish to suggest.

7. It is our experience that the majority of subscriber complaints concerning the technical quality of service relate to one of the following areas: (1) the inability of the subscriber to utilize fully subscriber receiver functions such as remote control and the television set's cable-ready tuner when connected to a cable television service;[9] (2) the strength of the signal delivered by the cable operator; (3) the amount of electromagnetic noise and unwanted system-generated by-products contained in the signal delivered; (4) the ability of the cable operator to maintain the system's equilibrium, so as to provide consistency for all the system's channels; (5) maintenance of the physical integrity of the cable system plant; and (6) color-related quality problems that manifest themselves at a subscriber's terminal, such as the loss of highlights and detail in darker picture areas, color smearing, wrong color, and the like.

Classes of Cable Channels Affected

8. We propose to extend our technical standards to all analog NTSC video downstream signals -- that is, signals transmitted from the cable headend to subscriber terminals -- on all cable channels.[10] This comports with our objective to ensure that cable systems meeting these standards provide an acceptable quality of service to their subscribers, and that signal quality be uniform for all video channels in the cable system. As we stated previously, "since all these classes of cable channels share the same physical facility or conduit ... the quality of one class of channel can potentially affect the quality of the other channel classes." *MM Docket No. 85-38*, 3 FCC Rcd at 5969. We do not propose, therefore, to discriminate among video cable channels as to the quality of signal expected.[11] This approach will also further the efficiency of franchising authorities as well as this Commission in meeting their statutory responsibilities for monitoring signal quality and compliance with existing regulations in this area.

9. At the present time, we believe that creating standards for non-NTSC signals offered on class III and class IV cable channels would be premature. Given the wide variety of such services offered on these channels, it would be extremely difficult to develop uniform standards of sufficient ease of application at this time that would not be likely to stifle continuing innovation and experimentation in this field, which we are statutorily required to promote.[12] Such standards would in any event add very little to video signal quality. We further note that problems in many of these signals -- *e.g.*, pay channels control, pay-per-view information -- will most often have an immediate impact on the revenues of the cable operator, who thus has a distinct incentive to fix any problems arising without governmental regulatory control.

10. We also believe that it is premature to create technical standards for cable delivery of HDTV signals. Tests for HDTV systems are still in the experimental stage, and this Commission has yet to select an HDTV standard. In addition, if HDTV delivery employs digital transmission techniques, the parameters for technical standards in such a case may be vastly different than those for analog NTSC signals. We retain the authority, however, to address this issue at a later time, should the adoption of technical standards appear desirable.

Federal Preemption

11. We stated in our *Cable Report* to Congress that it was our intent to continue to preempt the power of local authorities to set technical standards more stringent than those we establish. *Id.* at 5058. We continue to believe that this policy is appropriate to ensure that interstate communications, technical innovation, and service to the public are not hindered by divergent and conflicting technical regulations at the local level by more than 30,000 communities. Accordingly, we propose to preclude local standards that differ from those which we establish.[13] We also seek comment on whether our proposal to exclude non-NTSC class III and IV signals from technical standards comports with the decision of the Court of Appeals for the District of Columbia Circuit in *City of New York v. FCC*, *supra*. We are also proposing to exempt systems serving fewer than 1000 subscribers from our technical standards. Therefore, we propose to allow franchising authorities to set technical standards for such systems, so long as such standards are not more stringent than ours.

12. Having set forth our proposals concerning the scope of our rules and the extent of federal preemption, we now turn to our specific proposals for technical standards. As noted above, our current rules on cable signal quality merely serve as guidelines. We are now proposing to adopt those guidelines as mandatory requirements, with certain proposed additions and modifications as set forth below.

Channel Boundary Requirements

13. Currently, our rules set forth specific frequency boundaries for cable channels delivered to subscriber terminals and for frequency converters supplied to cable subscribers. 47 C.F.R. § 76.605(a)(1), (2). We propose eliminating the specific channel boundary requirements

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[9] Television receivers are regulated under Part 15 of our rules, since they are subscriber premises equipment over which a cable operator has no control. Consequently, complaints regarding incompatibility of television receivers with cable systems as well as direct pick-up problems are beyond the scope of this proceeding. However, it should be noted that these issues are of concern to the Commission and we are following with interest the ongoing inter-industry negotiations in this area.

[10] Analog NTSC (National Television Systems Committee) video is the television signal standard used in the United States.

[11] In the case of encoded signals, however, signal performance will be measured after decoding and related processing occurs.

[12] *See* 47 U.S.C. § 521.

[13] We recognize that we have previously preempted only those local standards or guidelines more stringent than ours. However, given our objective of ensuring an acceptable quality of television to cable subscribers, we do not propose to allow, except in a limited number of cases discussed below, *see* paragraphs 20, 25, 28 and 30, *infra*, franchising authorities to set standards less rigorous than those designed to achieve acceptable signal quality.

and the stability requirements of the converters. We believe that it is sufficient that we require that the signals provided to a subscriber must be able to be received by the subscriber's television set or frequency converter. It further appears that most cable converters used are quite sophisticated, combining numerous scrambling and control functions, which dictate a high degree of stability. Also, even older integrated electronic converters (*e.g.*, those ten to fifteen years old) are quite stable. Finally, there are more cable ready television receivers being sold than those that are not cable ready. In short, we believe that in today's marketplace, we need only impose a general requirement regarding channel boundaries and converter stability.

Aural Standards

14. To date, we have imposed few technical guidelines regarding sound quality in a television signal. We believe that existing technical guidelines for sound quality would be adequate. The Commission has not received many complaints about sound quality. Moreover, the cable industry generally recognizes that the provision of high quality cable audio services can lead to additional revenues for their systems. Finally, the music video services such as MTV would lead most operators to deliver a satisfactory level of sound quality on the cable system. In short, no additional standards directly related to audio quality appear warranted, and none are proposed.

15. Certain audio factors, however, will affect the quality of the video signal. We propose, therefore, that the aural carrier levels on all channels should be between 13 and 17 dB below the associated visual carrier levels. We propose to reinstitute this standard to control interference within the cable system. *See* former § 76.605(a)(6) of the Commission's Rules. An aural carrier level that is too high may cause interference to the upper adjacent channel and a level that is too low may cause degradation in sound quality. This standard was removed in 1985 even as a guideline because television stations (the class I channels received by the cable operators) can operate their audio signal levels at any power level as long as it does not exceed 22% of the peak visual carrier power levels.[14] This standard was deleted to bring our cable rules into alignment with our broadcast rules. *MM Docket No. 85-38*, 102 FCC 2d at 1381. However, this can be an interference controlling standard and since we propose extending the technical standards for class I channels to class II and III channels, it would be appropriate to reimpose this standard.

16. We also propose to require that the aural center frequency be 4.5 MHz ± 5 kHz above the frequency of the visual carrier. This standard sets the aural carrier and tolerance, and contributes to controlling interference within the system. This is, in fact, our current guideline.

Visual Signal Level Standards

17. The visual signal level is a key component with respect to signal quality and subscriber complaints arising from cable service. While a stronger signal would provide a better television picture to the subscriber and would overcome or mask noise and other disturbances in the picture, the signal must not overload the receiver. We believe that our proposal set forth below appropriately balances these considerations. We have considered a number of factors which we set forth as background.

18. The television household landscape has changed markedly since we first adopted technical standards for cable systems. In the early 1970s, most television households had a single television set, usually black-and-white, and VCRs were nonexistent. Cable systems were designed accordingly. Today, however, some two decades later, close to 70% of television households have VCRs,[15] the average number of television sets in a household is two,[16] a significant percentage of television sets in use are now 26 inches or larger diagonally, and black-and-white sets are uncommon. Given our statutory goal of assuring "that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public,"[17] we believe that it is appropriate to take the foregoing factors into consideration in setting technical standards for cable television.

19. In 1972, we required delivery of signals so that at no time is the signal on any cable television channel lower than the equivalent of 0 dBmV (1 millivolt across an impedance of 75 ohms). *See Cable Television Report and Order*, 36 FCC 2d at 200. This level is perfectly acceptable if there is only one television set to be served, or the cable signal does not have to pass through the passive splitter in a VCR. Generally, a direct pass through a VCR to the television set would cause the television signal strength to decrease by a factor of greater than 2, or about 3.5 dB. The same would hold true if any passive splitters were used to serve a second set in the home. Also, the additional cabling required for the second set would further attenuate the signal by 6 to 8 dB for every 100 feet of cable, which would further reduce the signal strength into the second set.

20. In view of the foregoing, we propose to increase the required signal strength by 6 dB for the visual signal level. The standard proposed should be 6 dBmV (2 millivolts across an impendance of 75 ohms) at the subscriber terminal or cable interface device. In fact, most systems do design for this level. For systems that cannot meet this standard, various remedies exist, which include amplification with new converters, or replacing components in the cable amplifiers. However, we are concerned that systems serving areas with only a few homes per mile may not be able to meet this standard. Therefore, we seek comments as to how to appropriately define such systems and whether, if at all, we should allow for a relaxation of standards if the local jurisdiction that granted the cable television franchise agrees to a lower signal level, as long as this level does not fall below the equivalent of 0 dBmV. We propose that any such agreement must be in writing, and be submitted on request to the Commission. We also propose to eliminate the reference to 300 ohms cable systems in § 76.605(a)(4) of our Rules, since such systems

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[14] *See* 47 C.F.R. § 73.682 (a)(15).
[15] Television Bureau of Advertising, Inc., "Trends in VCR Usage," April 1990, pp. 3, 5.
[16] *Id.* at pp. 3-6.
[17] 47 U.S.C. § 521(4).

are extremely rare. However, to allow for systems that may have impedances other than 75 ohms, we propose to apply the following formula:

> 2 multiplied by the square root of 0.0133(Z) mV, where Z is the impedance of the cable plant.

21. An important attribute of cable-delivered signals is the consistency of signal level and quality among the numerous channels in the system. The proliferation of remote control units has allowed frequent channel switching to become commonplace among television viewers. Thus, the ability of the cable system to maintain consistent signal levels and quality has become even more critical in minimizing subscriber complaints, and it is our experience that good operating systems do frequently check for channel signal strength variations in their cable plant to provide consistent signal to their subscribers. Our current guidelines provide that during any 24-hour period, each channel's visual signal level should be within a range of 12 dB, and that the level be maintained within 3 dB of that of any adjacent channel and within 12 dB of any other channel (the "24-hour test"); nor should the signal levels overload the subscriber's receiver.[18] These standards are easily achievable and should, if adhered to, satisfy a majority of cable subscribers' complaints. Consequently, we propose to retain the standards of our current guidelines. However, we propose that two 24-hour tests be performed, and that the times of day at which the measurements are taken be comparable. We further propose that the tests for this standard be performed once in the summer and once in the winter, to ascertain the stability of the equipment (*i.e.*, the amplifier automatic gain controls). This will compare the system performance between the largest changes in temperature along the cable plant, thus ensuring the stability of the cable system throughout the year.

Amplitude Characteristic

22. The current rules require that the amplitude characteristic be maintained within a range of ± 2 dB from 0.75 MHz to 5.0 MHz above the lower channel boundary limit.[19]

The amplitude characteristic standard is difficult to quantify from the subscriber's point of view. Generally, adherence to this standard will contribute to improved picture quality by preventing loss of resolution and avoiding anomalous picture impairments. Deviation from this standard could cause picture impairments such as streaking, smearing, and color errors. Additionally, the standard maintains the relative order of the different components in the television waveform which would generally ensure a higher quality picture. We propose to retain this standard, with a slight modification, to provide for a more accurate method of measurement. We propose that the operator measure the frequency response across the entire 6 MHz channel bandwidth, and that the frequency response not vary by more than ± 2 dB across the 6 MHz channel.

Signal Level to Noise Ratio

23. The visual signal level to undesired noise ratio (C/N) is another key factor in the signal quality of a TV picture. The C/N is the level of the desired signal above the level of undesired noise in the delivered picture. The higher the ratio, the better quality the picture. For example, a good NTSC TV picture should have a C/N of 43 dB or better.

24. Our rules currently set a C/N guideline of 36 dB.[20] This guideline has long been a source of controversy. In fact, a C/N of 36 dB approximates a Television Allocation Study Organization (TASO) Grade 3 picture: a passable picture, indicating acceptable quality with perceptible but not objectionable impairment.[21] Industry system design generally recommends a C/N of 43 dB or better, approximating a TASO Grade 2 picture: a fine picture, indicates a picture of high enough quality to provide enjoyable viewing with impairment just perceptible.[22] We recognize that requiring a C/N of 36 dB does not necessarily mean that all of a system's subscribers would receive this type of marginal picture. Generally, subscribers closer to the headend of the cable plant will receive better quality pictures by virtue of being exposed to less system-generated or other introduced noise in the cable. Nevertheless, we believe that this parameter is a highly important component of the quality of the picture received by subscribers, and we reiterate that there is merit to the criticism that our standards need to be improved in order to assure a high quality picture to cable subscribers. *See Cable Report*, 5 FCC Rcd at 5056. We therefore propose to increase the C/N by 7 dB, to a C/N of 43 dB. This approximates a one TASO grade increase from TASO Grade 3 to TASO Grade 2. This single augmentation of our standards would contribute vastly toward improving the quality of signal delivered by a cable operator, and should reduce significantly subscriber signal quality complaints. A well-designed cable system with average maintenance can meet this standard.

25. We recognize that certain cable systems serving areas with only a few homes per mile may not be able to meet a C/N level of 43 dB at the system's worst subscriber location. One possible method of addressing this situation could be to allow local franchising authorities to negotiate with cable operators for a lower standard: *e.g.*, a C/N of not less than 40 dB. We seek comments on this and other methods of reducing the burden on cable operators whose systems cannot (or cannot promptly) meet this standard.

26. Coherent distortions are the unwanted by-products caused by the operational (nonlinear transfer) characteristics of cable system equipment (such as amplifiers) during the processing and amplification of the visual signal portion of all the television channels in a cable system. These

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[18] 47 C.F.R. § 76.605(a)(5).
[19] 47 C.F.R. § 76.605(a)(7).
[20] 47 C.F.R. § 76.605(a)(8).
[21] TASO created television picture impairment standards that assign numerical grades to the subjective quality of a television signal.
[22] We note, too, that picture impairment due to noise is dependent upon other nonrelated system factors as well: for example, program content, viewer's subjectivity, and the television receiver characteristics (*e.g.*, on a large screen television set, the snow particles (noise) would be more pronounced and on a high resolution TV set the snow particles would be more perceptible).

include composite third order beat distortions, second order beat distortions, and cross modulation products. These distortions generally show up as either moving or stationary vertical, horizontal, or diagonal bars and lines within the television picture. The severity of these disturbances is mainly dependent upon system design, which takes into consideration the number of distribution amplifiers in series (cascade) and operating levels, as well as system malfunctions. Generally, the greater the number of channels being carried on the cable system, the greater the likelihood that these coherent distortions would be visible at the subscriber's television set. Coherent distortions also directly relate to the signal strength and C/N standards proposed above. Due to the inherent design of cable systems, an increase in signal strength and C/N could also mean an increase in the amount of coherent disturbances generated within the cable system. Accordingly, a balance with regard to the decrease in coherent distortions and signal strength should be achieved.

27. In the 1970s, a majority of cable systems had fewer than 21 channels. However, since that time, most cable systems have exceeded 21 channels; in fact, 60 channels is common among newer cable systems today. Further, the use of coherent channel cable systems (which place these disturbances on top of the visual carriers so that, subjectively, fewer of these disturbances can be detected by the subscriber) has become widespread. In view of these developments, our current rule[23] should be modified to take these changes into account.

28. We propose that the ratio of visual signal level to coherent disturbances be increased from not less than 46 dB to not less than 53 dB for noncoherent channel systems. For coherent channel systems, the ratio of visual signal level to coherent disturbances shall not be less than 47 dB. The combination of these proposed levels with those of C/N of 43 dB and signal output level of 6 dBmV will generally ensure a good quality picture for the subscriber. Again, we recognize that certain cable systems may not be immediately able to meet these standards (*see* paragraphs 20 and 25, *supra*). In certain cases, as with our C/N standard, a lower standard, such as a ratio of not less than 46 dB for all disturbances, conditioned upon the agreement of the local franchising authority may be appropriate. We seek comment on this and other proposals addressing this concern.

Terminal Isolation

29. The quality of terminal isolation equipment utilized by the cable industry has proven to be stable and acceptable over the past decade. Given the absence of complaints or other evidence that such testing will provide benefits toward improving signal quality, we perceive no need to continue to require testing of terminal isolation provided subscribers, even on a periodic basis. We propose simply that terminal isolation equipment may have specifications provided by the manufacturer that the equipment will provide to each subscriber terminal isolation of not less than 18 dB, and shall, in any event, be sufficient to prevent reflections from producing visible impairments at any other subscriber terminal.

Hum Modulations

30. Low frequency disturbances, or hum modulations (hum), generally manifest themselves in the form of horizontal bars running across the TV screen. Hum is mostly introduced into the cable signal from the electrical powering of the cable system amplifiers. This was an acute problem in the days of tube-type equipment where power was a key factor. The move away from that type of equipment generally stabilized the hum disturbances to a great extent. Our current guidelines expect a low frequency (hum) response of no more than 5% of the visual signal level.[24] At 5%, a subscriber would just begin to see the bands moving up on the picture. We propose to require a hum disturbance level of 3% to minimize hum disturbances. This will detect problems with the powering and spacing of amplifiers in the system. Most systems are designed for hum disturbances of between 2% and 4%. However, for systems serving areas with few subscribers per mile (see paragraph 20, above), we propose to permit cable systems to negotiate with franchising authorities to allow a hum disturbance level of up to 5%.[25]

Color Signals

31. The remaining standards deal predominantly with the color portion of the television signal. The problems identified by the following three tests generally stem from poor equipment design or use of inexpensive equipment, or the malfunctioning of equipment from lack of maintenance or age. Testing and correcting these problems will improve the delivery of the color portion of the cable television channel. Systems meeting these standards will provide more vivid and higher quality pictures to subscribers, especially those with the larger-screen television receivers, which receivers are more likely to display these problems.

32. Differential gain is a measurement used to determine the change in amplitude of the chrominance signal relative to the amplitude of the associated luminance signal. To the viewer, a poor differential gain in the system would show up as a color change when an object travels from a dark portion of the picture to a light portion: *e.g.*, a red sports car's color would change as it goes from a shaded to a sunny area. Subjective viewing tests indicate that differential gain of 30% is rated as just perceptible. We propose that the levels of differential gain measured at the headend be no greater than 20%. This level would ensure proper color delivery.

33. Related to differential gain is differential phase. This is a measurement used to determine the phase change in the chrominance signal relative to the amplitude of the luminance signal. It would manifest itself as a variation in hue as the intensity of the picture changes from dark to light: *e.g.*, a person's face might change its tint when

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[23] 47 C.F.R. § 76.605(a)(9).

[24] 47 C.F.R. § 76.605(a)(6).

[25] As we noted in paragraph 20 and footnote 13, *supra*, the Commission will allow cable operators and franchising authorities to agree to certain lesser technical standards where it can be demonstrated that service would otherwise not be provided to cable subscribers in low density areas. However, in so doing, we do not contemplate widespread exceptions being granted to cable operators, since this would undercut the very purpose of our establishment of cable technical standards which is to establish a basic quality of service to cable subscribers.

moving from a dark area of a room to a bright window-lit area of the room. Subjective viewing tests indicate that a differential phase of 10 to 15 degrees is just perceptible with maximum tolerable levels. We propose that the level of differential phase not exceed 5 degrees, measured at the headend. This test, combined with differential gain and chroma delay requirements (*see* paragraph 34, *infra*), should ensure a proper delivery of color signals to subscribers, improving the quality of the picture received.

34. Finally, a chrominance-luminance delay inequality (chroma delay) test should be performed at the subscriber terminal. This type of distortion occurs when a delay is introduced into the chrominance portion of the color signal without an equal delay being introduced into the luminance portion. The result is a misregistration of the color and black and white portions of the picture. Simply stated, the viewer would generally see red colors smearing into white or light-colored backgrounds, or would sometimes see color ghosting in the television picture. We propose that at the subscriber terminal, the chrominance-luminance delay introduced into the cable television system be equal to or less than 150 nanoseconds. This is the generally recommended engineering standard in the cable industry and should minimize the distortion noted above.

Testing Requirements

35. As we are proposing to reinstitute a framework of standards, we propose to expand the annual proof of performance requirement to encompass these standards. It will be the responsibility of the cable system operator to conduct performance tests that will offer reasonable assurance that the system is performing in such a manner as to achieve our goal of acceptable quality of service. As is the case with our current rules concerning signal leakage, performance tests will be conducted annually, and the resulting test data will be maintained at the operator's local business office for a minimum of five years.[26]

36. We propose, too, that performance measurements be required at a minimum of six points in the system. We continue to emphasize, as we did in 1972, that "[o]ur aim is not to generate marginally useful measurement data for ourselves, but to encourage each cable operator to engage in systematic performance checking and preventive maintenance." *Cable Television Report and Order*, 36 FCC 2d at 300. Nor do we seek to impose unnecessary burdens upon cable operators. However, given the pattern of technical problems already found, *Cable Report*, 5 FCC Rcd at 4990, and our recognition of the growth of cable plant and expansions of system size over the past years, we believe that requiring six test points, in place of the current three, will provide a more reasonable measurement of system performance, and will likely encourage ongoing preventive maintenance on the part of cable operators. We emphasize that while proof of performance need only be demonstrated annually, cable systems are obligated to comply with our rules on a continuing basis. In this respect, we propose to randomly sample cable systems to ascertain the general level of compliance with our standards by the cable industry. Should cable systems deviate from our standards we will assess monetary forfeitures against the errant systems (*but see* paragraph 38, *infra*). Should we find that the industry as a whole shows undesirable levels of compliance, we would increase our enforcement efforts.

Specialized Cable Design

37. As we noted in paragraph 6, *supra*, we are required by statute to avoid impeding technological innovation and experimentation within the cable industry.[27] Cable system design is continually developing to accommodate different requirements and additional services to be provided by the cable plant. These developments include further redesign of the tree and branch experiments such as personal communications networks (PCNs) within existing cable plant. Cognizant of these continuing changes, we propose to continue to allow cable systems using specialized techniques or having a basic design which cannot meet one or more of our standards, to be permitted to operate provided an adequate showing is made to the Commission which establishes that the public interest is benefited. We expect such a showing to demonstrate that an acceptable signal will still be delivered to the cable subscriber. This policy is contained in our current rules.[28]

Federal-Local Relationships

38. In most circumstances, we do not ask or expect others to enforce our rules. However, given the nature of our "deliberately structured dualism" in the regulation of cable television, *Cable Television Report and Order*, 36 FCC 2d at 207, particularly as reflected in the Cable Act, we seek comments as to the most efficient and proper roles of this Commission and local franchising authorities in enforcing our proposed standards. Tentatively, we believe that the local franchising authorities are the proper initial locus of any complaint. Local authorities are most familiar with the local system operation and plant, as well as any local factors which could impact on the resolution of a problem. Indeed, our previous practice upon receiving complaints concerning a cable system's deviation from our technical standards was to refer the complaint for local resolution which resulted in the disposition of the vast majority of such complaints. We propose to reinstitute this process. We propose to involve ourselves directly in the resolution of complaints only in the face of problems or abuse that cannot be resolved at the municipal level. We believe that our resources will be best spent

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[26] We perceive no need to amend our present signal leakage rules. The limits set by our rules are adequate, and will help maintain a high standard for signal quality by controlling the ingress into a cable system of unwanted signals as a by-product of controlling signal egress. However, to eliminate any confusion in our terminology, we propose to describe our current limits on radiofrequency radiation, 47 C.F.R. § 76.605(a)(11), as signal leakage limits. We also will specify all measurements in equivalent metric units in accordance with U. S. Government Policy. *See* 15 C.F.R. Part 19, Subpart B. In addition, in order to reduce monitoring burdens on cable operators by minimizing unnecessary regulation, *see* 47 U.S.C. § 521(6), we propose to merge our current annual measurement requirements for signal leakage, 47 C.F.R. § 76.601(b)(1), with our aeronautical frequency quarterly monitoring requirements, 47 C.F.R. § 76.614, where applicable. In other words, a cable system required to perform leakage monitoring and repairs every three months should not be required to perform a separate annual signal leakage measurement as well.

[27] *See* 47 U.S.C. § 521(4), (6).

[28] 47 C.F.R. § 76.605(b).

addressing intractable reception problems brought to our attention by local franchising authorities. We seek comments as to just what this point might be. We also seek comments concerning what role market forces might play in ensuring compliance with our standards, as well as the impact our random compliance sampling (*see* paragraph 36, *supra)* would have toward this end.

39. We believe that our technical standards, as proposed above and set forth in Appendix A, will serve to ensure that cable subscribers receive an acceptable quality of video signal on all cable channels, while at the same time not unduly burdening the cable operator in providing service to the system's subscribers. We have attempted to achieve this balance with the minimum necessary intrusiveness. We believe our proposal will provide a level of service to cable subscribers that is in the public interest. We seek comments on this evaluation with respect to each of our proposed standards, and our proposal as a whole.

IV. ADMINISTRATIVE MATTERS

Ex Parte Rules - Non-Restricted Proceeding

40. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206 (a).

Comment Information

41. Pursuant to procedures set forth in § 1.415 and § 1.419 of the Commission's Rules, interested parties may file comments on or before **September 17, 1991**and reply comments on or before **October 17, 1991**. Extensions of these time periods are not contemplated. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Regulatory Flexibility Act

42. As required by § 603 of the Regulatory Flexibility Act, the FCC has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the *Notice*, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with § 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. §§ 601 *et seq.* (1981)).

Additional Information

43. For further information concerning this proceeding, contact Barrett L. Brick, Cable Television Branch, Mass Media Bureau, (202) 632-7480, with questions addressing legal issues, or John Wong, Cable Television Branch, Mass Media Bureau, (202) 254-3420, with questions addressing technical issues.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Proposed Rules

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended to read as follows:

1. Section 76.601 is proposed to be amended by revising paragraph (b), adding paragraphs (c), (d) and (e), and by removing the concluding note to read as follows:

§ 76.601. Performance tests.

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(b) The operator of each cable television system shall maintain at its local office a current listing of the cable television channels which that system delivers to its subscribers.

(c) The operator of each cable television system shall conduct complete performance tests of that system at least once each calendar year (at intervals not to exceed 14 months) and shall maintain the resulting test data on file at the operator's local business office for at least five (5) years. The test data shall be made available for inspection by the Commission or the local franchisor on request. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in § 76.605(a). The tests shall be made on each analog NTSC downstream video channel carried on the system pursuant to § 76.605(a), and shall include measurements made at no less than six widely separated points within each mechanically continuous set of cables within the cable television system. Within each mechanically continuous set of cables, at least two measurement points shall be representative of terminals most distant from the system input in terms of cable distance. The measurements may be taken at convenient monitoring points in the cable network: **Provided,** that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of cali-

bration, a description of the procedures utilized, and a statement of qualification of the person performing the tests shall be set forth.

(d) Successful completion of the performance tests required by paragraph (c) of this section does not relieve the system of the obligation to comply with all pertinent technical standards at all subscriber terminals. Additional tests, repeat tests, or tests involving specified subscriber terminals may be required by the Commission or the local franchisor to secure compliance with the technical standards.

(e) The provisions of paragraphs (c) and (d) of this section shall not apply to any cable television system having fewer than 1,000 subscribers: **Provided, however,** That any cable television system using any frequency spectrum other than that allocated to over-the-air television and FM broadcasting (as described in § 73.603 and § 73.201 of this chapter) is required to conduct all tests, measurements, and monitoring of signal leakage that are required by this subpart. Compliance with the monitoring, logging and the leakage repair requirements of § 76.614 combined with the maintenance of the leakage log for a period of five (5) years will satisfy the leakage tests, measurements, and monitoring requirements of this section.

2. Section 76.605 is proposed to be amended by revising paragraphs (a) and (b), and by revising Note (1), by redesignating Note (2) as Note (3) and by adding a new Note (2) to read as follows:

§ 76.605 Technical Standards.

(a) The following requirements apply to the performance of a cable television system as measured at any subscriber terminal with a matched impedance at the termination point or at the headend of the cable television system as noted. The requirements are applicable to each analog NTSC video downstream cable television channel in the system:

(1) The cable television channels delivered to the subscriber's terminal shall be capable of being received and displayed by TV broadcast receivers used for the off-the-air reception of TV broadcast signals, as authorized under Part 73 of this chapter.

(2) The aural center frequency of the aural carrier must be 4.5 MHz ± 5 kHz above the frequency of the visual carrier.

(3) The visual signal level, across a terminating impedance which correctly matches the internal impedance of the cable system as viewed from the subscriber terminal, shall be not less than 2 millivolts across an internal impedance of 75 ohms (6 dBmV). At other impedance values, the visual signal level shall be 2 times the square root of 0.0133(Z) millivolts, where Z is the appropriate impedance value.

(4) The visual signal level on each channel shall not vary more than 12 decibels within any six month interval which must include tests performed during a 24-hour period in July or August and a 24-hour period in January or February, and shall be maintained within:

(i) 3 decibels of the visual signal level of any visual carrier within 6 MHz nominal frequency separation;

(ii) 12 decibels of the visual signal level on any other channel;

(iii) A maximum level such that signal degradation due to overload in the subscriber's receiver does not occur.

(5) The rms voltage of the aural signal shall be maintained between 13 and 17 decibels below the associated visual signal level.

(6) The frequency response of the system shall be within a range of ± 2 decibels across the 6 MHz band of frequencies of the cable television channel.

(7) The ratio of RF visual signal level to system noise, and of RF visual signal level to any undesired co-channel television signal operating on proper offset assignment, shall not be less than 43 decibels. However, for class I cable television channels, this requirement is applicable only to:

(i) Each signal which is delivered by a cable television system to subscribers within the predicted Grade B contour for that signal;

(ii) Each signal which is first picked up within its predicted Grade B contour;

(iii) Each signal that is first received by the cable television system by direct video feed from a TV broadcast station, a low power TV station, or a TV translator station.

(8) The ratio of visual signal level to the rms amplitude of any coherent disturbances such as intermodulation products, second and third order distortions, or discrete-frequency interfering signals not operating on proper offset assignments shall be as follows:

(i) The ratio of visual signal level to coherent disturbances shall not be less than 53 decibels for non-coherent channel cable systems; or

(ii) The ratio of visual signal level to coherent disturbances shall not be less than 47 decibels for coherent channel cable systems.

(9) The terminal isolation provided to each subscriber terminal shall not be less than 18 decibels, and shall be sufficient to prevent reflections caused by open-circuited or short-circuited subscriber terminals from producing visible picture impairments at any other subscriber terminal.

(10) The peak-to-peak variation in visual signal level caused by undesired low frequency disturbances (hum or repetitive transients) generated within the system, or by inadequate low frequency response, shall not exceed 3 percent of the visual signal level.

(11) The chrominance-luminance delay inequality or chroma delay, which is the change in delay time of the chrominance component of the signal relative to the luminance component after passing through the system, shall be within 150 nanoseconds.

The following requirements apply to the performance of the cable television system as measured at the processing facilities or headend of the system:

(12) The differential gain for the color subcarrier of the television signal, which is measured as the difference in amplitude between the largest and smallest segments of the chrominance signal, divided by the largest and expressed in percent, shall not exceed ± 20 percent.

(13) The differential phase for the color subcarrier of the television signal, which is measured as the largest phase difference in degrees between each segment of the chrominance signal and reference segment, the segment at the pedestal level of 0 IRE, shall not exceed ± 5 degrees.

(14) As an exception to the general provision requiring measurements to be made at subscriber terminals, and without regard to the type of signals carried by the cable television system, signal leakage from a cable television system shall be measured in accordance with the procedures outlined in § 76.609(h) and shall be limited as follows:

Frequencies	Signal Leakage Limit (microvolts/meter)	Distance in meters (m)
Less than and including 54 MHz, and over 216 MHz	15	30
Over 54 up to and including 216 MHz	20	3

(b) Cable television systems distributing signals by using methods such as nonconventional coaxial cable techniques, noncoaxial copper cable techniques, specialized coaxial cable and fiber optical cable hybridization techniques or specialized compression techniques or specialized receiving devices, and which, because of their basic design, cannot comply with one or more of the technical standards set forth in paragraphs (a) of this section, may be permitted to operate: **Provided**, that an adequate showing is made which establishes that the public interest is benefited. In such instances, the Commission may prescribe special technical requirements to ensure that subscribers to such systems are provided with an equivalent level of good quality service.

Note 1: State or local franchising authorities may incorporate the requirements in § 76.605(a) into a cable system's franchise. The Commission will not apply these requirements to cable systems serving fewer than 1000 subscribers, although franchising authorities may apply these or less stringent requirements to such cable systems.

Note 2: For systems serving areas, in whole or part, with fewer than [ ] homes per mile, the system may negotiate with its local franchising authority for standards less stringent than those in §§ 76.605(a)(3), 76.605(a)(7), 76.605(a)(8), and 76.605(a)(10). Any such agreement shall be reduced to writing and accompany the system's proof of performance records.

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3. Section 76.609 is proposed to be amended by revising the last sentence in paragraph (e), by revising the first sentence in paragraph (h) and by revising paragraph (i) to read as follows:

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(e) ***Alternatively, measurements made in accordance with the NCTA Recommended Practices for Measurements on Cable Television Systems, 2nd edition, November 1989, on noise measurement may be employed.

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(h) Measurements to determine the field strength of the signal leakage emanated by the cable television system shall be made in accordance with standard engineering procedures.

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(i) Measurements made to determine the differential gain, differential phase, and the chrominance-luminance delay inequality (chroma delay) shall be made in accordance with the NCTA Recommended Practices for Measurements on Cable Television Systems, 2nd edition, November 1989, on these parameters.

APPENDIX B

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. *Reason for Action:* This action is taken in response to the decision in *City of New York v. FCC*, 814 F. 2d 720 (D.C. Cir. 1987), *aff'd*, 486 U. S. 57 (1988), and pursuant to the *Report in MM Docket No. 89-600*, 5 FCC Rcd 4962 (1990).

2. *Objective of This Action:* The actions proposed in this *Notice* are intended to improve cable television service to the public.

3. *Legal Basis:* Authority for action as proposed for this Rule Making is contained in § 4(i) and § 303 of the Communications Act of 1934, as amended.

4. *Number and Type of Small Entities Affected by the Proposed Rules:* Approximately 30,000 existing cable systems of all sizes may be affected by the proposals contained in this decision.

5. *Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rules:* The Commission proposes to require cable systems to comply with technical standards. The Commission proposes to expand the current annual proof of performance requirement to encompass these standards, and that a minimum of six points be tested. It is proposed that the resulting test data be maintained at the cable system operator's local business office for a minimum of five years.

6. *Federal Rules which Overlap, Duplicate or Conflict with the rules:* None.

7. *Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives of the Action:* None. The proposed rules provide for exemption of small entities in situations in which compliance proves too burdensome. The Commission solicits comments on other alternatives.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CHEROKEE COMMUNICATIONS, INC. — File No. I-T-C-91-109

Application for authority to operate as an international resale carrier.

FARMER'S LONG DISTANCE, INC. — File No. I-T-C-91-116

Application for authority to operate as an international resale carrier.

MID-COM COMMUNICATIONS, INC. — File No. I-T-C-91-121

Application for authority to operate as an international resale carrier.

TELWORLD COMMUNICATIONS CORP. — File No. I-T-C-91-122

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 20, 1991; Released: June 27, 1991

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by Cherokee Communications, Inc. (Cherokee), Farmer's Long Distance, Inc. (Farmer's), Mid-Com Communications, Inc. (Mid-Com) and Telworld Communications Corp. (Telworld).

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-91-109, I-T-C-91-116, I-T-C-91-121 and I-T-C-91-122 ARE GRANTED, and

a. Cherokee is authorized to provide international switched voice services by the resale of the international switched voice services set forth in Intellicall Operator Services, Inc.'s Tariff F.C.C. No. 1 between the U.S. and the points listed in that tariff;

b. Farmer's is authorized to provide international switched voice services by the resale of the international switched voice services set forth in MCI's Tariff F.C.C. No. 1, between the U.S. and the points listed in that tariff;

c. Mid-Com is authorized to provide international switched voice services by the resale of international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2 between the U.S. and the points listed in those tariffs; and

d. Telworld is authorized to provide international switched voice services by the resale of international switched voice services set forth in AT&T's Tariffs F.C.C. No. 1, MCI's Tariff F.C.C. No. 1, US Sprint's Tariff F.C.C. No. 1 and Advanced Telecommunications Corp.'s Tariff F.C.C. No. 1 between the U.S. and the points listed in those tariffs.

3. Copies of any operating agreements entered into between each applicant and its correspondents shall be filed with the Commission within 30 days of their execution.

4. IT IS FURTHER ORDERED that each applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

5. IT IS FURTHER ORDERED that each applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

6. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MOBILE SATELLITE COMMUNICATIONS, INC. d/b/a PITTSBURGH INTERNATIONAL TELEPORT — File No. I-T-C-91-111

Application for authority to establish channels of communications between the U.S. and INTELSAT satellites for the provision of INTELSAT Business Services

TRANSMISSION OPERATOR PROVIDED SYSTEMS, INC. — File No. I-T-C-91-117

Application for authority to establish channels of communications between the U.S. and INTELSAT Satelites for the provision of International Television Service.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 20, 1991; Released: June 27, 1991

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-91-111 and I-T-C-91-117 ARE GRANTED, and

a. Mobile Satellite Communications, Inc. is authorized to establish channels of communication between the U.S. and INTELSAT satellites for the provision of INTELSAT Business Services (IBS) and related digital video services between the U.S. and the overseas points listed in Comsat's Tariff for the space segment of IBS and related digital video services; and

b. Transmission Operator Provided Systems, Inc. is authorized to establish channels of communication between the U.S. and INTELSAT satellites for the provision of INTELSAT Business Services (IBS) and related digital services and International Television Service between the U.S. and the overseas points listed in Comsat's Tariffs for the space segment of IBS and related digital services and International Television Service.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

5. IT IS FURTHER ORDERED that the applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

6. IT IS FURTHER ORDERED that the applicants shall file semi-annual circuit reports pursuant to Section 63.10(b) of the Commission's Rules, 47 C.F.R. Section 63.10(b).

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: June 13, 1991

DISPLAY STANDARDS FOR TELEVISION CLOSED-CAPTIONING DECODERS MODIFIED (GEN. DOCKET 91-1)

On April 12, 1991, the Commission adopted a *Report and Order* establishing the performance and display standards, as well as marketing regulations, that apply to closed-caption decoding circuitry required to be included in most television receivers by July 1, 1993. *See Report and Order,* General Docket No. 91-1, FCC 91-119, released April 15, 1991.

The rules adopted in this proceeding are being published in the Federal Register on June 13, 1991. In order to comply with Federal Register publication requirements, certain aspects of the rules printed in the *Report and Order,* as released on April 15, 1991, have been changed. Each paragraph in the adopted rules will now be individually codified. In addition, reference to a Society of Motion Picture and Television Engineers (SMPTE) Recommended Practice could not be included because it did not meet Federal Register length requirements. Language comparable to that in the SMPTE Recommended Practice has been included in the rules. The rules, as printed in the Federal Register, become effective July 13, 1991.

Office of Engineering and Technology contact: Richard B. Engelman at (202) 653-6288.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BellSouth Telephone Companies — Transmittal No. 377

Tariff F. C. C. No. 4

ORDER

Adopted: June 11, 1991; Released: June 12, 1991

By the Chief, Common Carrier Bureau:

1. On March 15, 1991, the BellSouth Telephone Companies (BellSouth) filed Transmittal No. 377 to establish Electronic White Pages (EWP) access service. On April 1, 1991, petitions for suspension and investigation were filed by American Telephone and Telegraph Company (AT&T) and MCI Telecommunications Corporation (MCI). BellSouth filed its opposition to these petitions on April 11, 1991. The tariff is scheduled to take effect on June 13, 1991.

2. EWP service provides white page listings to subscribers through computer connections instead of through an operator. BellSouth Description and Justification (D&J) at 1-1 and 1-2. Subscribers will access BellSouth's data base in Atlanta, Georgia, through its Public Packet Switching Network (PPSN). *Id.* at 1-3. Customers will be assigned User IDs that BellSouth will use to associate usage with customer accounts. *Id.* at 1-3 and 1-4. A nonrecurring User ID charge of $3.75 per ID will apply each time the customer submits a new, or changes an existing, name to be served. *Id.* at 3-3. A connection to the EWP system will be established when the customer initiates a query by sending a User ID and a name, locality, and area code to the EWP location. A "front end processor" will receive queries from the packet switch interface and pass the queries to the EWP database. The "front end processor" will then send back to the customer up to ten listings which match the search information provided. *Id.* at 4. These listings constitute a "screen, " for which BellSouth will charge 18 cents per screen. *Id.* at 3-3.

3. AT&T argues that BellSouth's charge of 18 cents for each EWP screen exceeds its underlying unit costs and, thus, appears on its face to be outside the zone of reasonableness. AT&T Petition at 3. AT&T calculates a unit cost (including an 11.25 percent return on investment) of 13 cents per screen. *Id.* AT&T also argues that BellSouth's unit costs may be inflated since it contends that the demand projection is understated. *Id.* at 3-4.

4. MCI asserts that BellSouth's usage sensitive screen charges are substantially above costs, and that BellSouth's User ID charge is entirely unsupported. MCI Petition at 2. MCI argues that, because BellSouth did not provide fully distributed cost information, it is impossible to determine the return on investment. However, MCI concludes that, from the incremental cost information provided, BellSouth expects its recurring rates to recover revenue 53.9 percent above expenses for the next three years. *Id.* Finally, MCI asserts that BellSouth does not give sufficient justification that a $3.75 User ID charge is just and reasonable. *Id.* at 4.

5. BellSouth responds that the AT&T and MCI petitions are devoid of allegations that the filing violates any Commission rule or decision. BellSouth Opposition at 1. BellSouth asserts that the test for justification of suspension is that "a petitioner must raise significant questions of unlawfulness and also demonstrate that immediate and serious harm is likely to occur if the tariff is not suspended." *Id.* at 2, citing Communications Satellite Corporation, Revisions to Tariff F.C.C. No. 102, Transmittal No. 680, Memorandum Opinion and Order, 4 FCC Rcd 7865 (1989) (at para. 21). BellSouth further asserts that MCI's argument against the nonrecurring User ID charges is baseless. Finally, BellSouth states that AT&T has provided no demonstration of flawed assumptions underlying BellSouth's cost showings. *Id.* at 6.

6. The Common Carrier Bureau has reviewed BellSouth's Transmittal 377, the petitioners' assertions, related pleadings, and additional cost support materials submitted by BellSouth after the Commission adopted the *LEC Price Cap Reconsideration Order*.[1] We conclude that no compelling argument has been presented that warrants an investigation at this time.

7. Accordingly, IT IS ORDERED that the petitions to suspend and investigate BellSouth Telephone Companies, Tariff F. C. C. No. 4, Transmittal No. 377, filed by American Telephone and Telegraph Company and MCI Telecommunications Corporation ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

[1] Policy and Rules Concerning Rates for Domimant Carriers, CC Docket No. 87-313, Order on Reconsideration, FCC 91-115, released Apr. 17, 1991 (*LEC Price Cap Reconsideration Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and Telegraph Company — Transmittal No. 3026

Revisions to Tariff F.C.C. No. 12

ORDER

Adopted: June 13, 1991; Released: June 13, 1991

By the Chief, Common Carrier Bureau:

1. American Telephone and Telegraph Company (AT&T) has filed Transmittal No. 3026 to modify Virtual Telecommunications Network Service (VTNS) Option 33, under which AT&T provides voice and data communications service among locations in the United States, Puerto Rico, the U. S. Virgin Islands, and specific international locations. The transmittal is scheduled to take effect on June 14, 1991.

2. Williams Telecommunications Group, Inc. (Williams) filed a petition to reject or suspend and investigate the Option 33 modifications on May 1, 1991. AT&T filed a reply on May 10, 1991.[1]

3. Williams claims that this filing is unlawful because a reduction in the minimum annual charge, as proposed here, demonstrates the lack of "mutual commitment" between the parties, a factor which AT&T claims distinguishes Tariff 12 from other tariffed services. Williams Petition at 3-4. Williams asserts that the revisions to Option 33 eliminate the "stability" of the long term, fixed commitment which purportedly enables AT&T to offer discounted rates in the first place, thereby calling into question the legitimacy of the tariff offering. *Id.* at 6 & n. 8, 8-9. Williams also charges that AT&T's tariff support material is deficient, questioning how Option 33 could be more profitable with the revisions than when initially filed, given reduced revenue projections. *Id.* at 6-7.

4. Williams further argues that AT&T has failed to demonstrate that modified Option 33 is an integrated service package that is "unlike" its component services and thus has failed to justify the discrimination between this option and AT&T's other services. *Id.* at 3-10. Williams also asserts that even if Option 33 could qualify as an integrated service package, its rates vary without justification from other options under Tariff 12 and are thus discriminatory. *Id.* at 10-12. Williams further alleges that by bundling 800 service with other Tariff 12 services, Option 33 allows AT&T to take advantage of the lack of number portability and effectively preclude a customer from leaving AT&T. *Id.* at 13-15. Williams further alleges that modified Option 33 violates the Commission's policy against geographic rate deaveraging and that Tariff 12 packages violate the Commission's *Private Line Guidelines*. *Id.* at 15-18. Finally, Williams contends that modified Option 33 raises the same issues as the options remanded by the U. S. Court of Appeals in the *Tariff 12 Remand* [2] and must be reviewed in light of the remand. *Id.* at 19.

5. AT&T replies that the revisions to Option 33 evidence no lack of mutual commitment and, in fact, are fully consistent with this characteristic of Tariff 12 services. AT&T claims that Williams erroneously presupposes that the Option 33 customer has been allowed to reduce its minimum annual charge, yet retain the full benefits of the option, as originally filed. AT&T Reply at 3-4. AT&T further responds that Williams has overlooked the fact that the customer has assumed substantial new obligations, including increases in all measured charges and a new nonrecurring charge in exchange for reduction of its minimum charge. *Id.* at 56.

6. In response to Williams' charges of discrimination, bundling, "likeness" among options, and lack of general availability, AT&T maintains that these allegations have been raised without success in previous VTNS filings and insists that Williams' claims provide no basis for any different treatment of the revisions to Option 33. *Id.* at 6-8. AT&T also insists that the Court of Appeals decision creates no basis to reject or suspend new or revised VTNS offerings and asserts that the most that the Commission should do is make Option 33 subject to the outcome of the remand proceeding. *Id.* at 7-8.

7. The Common Carrier Bureau has reviewed AT&T Transmittal No. 3026, the petition filed by Williams, and AT&T's reply. We conclude that no compelling argument has been presented that the tariff revisions are so patently unlawful as to warrant rejection.

8. On October 23, 1990, the U. S. Court of Appeals for the District of Columbia Circuit reversed and remanded the Commission's Order in CC Docket No. 87-568, AT&T Communications, Revisions to Tariff F.C.C. No. 12, Memorandum Opinion and Order, 4 FCC Rcd 4932, *recon. denied*, 4 FCC Rcd 7928 (1989). *See MCI Telecommunications Corp. v. FCC*, 917 F. 2d 30 (DC Cir. 1990). Although Transmittal 3026 does not present new questions that warrant investigation at this time, it could be affected by the Commission's decision in the CC Docket 87-568 remand proceedings. Therefore, Transmittal 3026 takes effect subject to the outcome of the remand proceedings in CC Docket 87-568.

9. Accordingly, IT IS ORDERED that the petition to reject, or to suspend and investigate, American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 3026 filed by Williams Telecommunications Group, Inc., IS DENIED.

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[1] Williams filed its petition one day late. AT&T notes this fact in its reply, and asserts that the Commission should not consider the petition. Williams filed a motion for leave to file a late petition on May 16, 1991, which we hereby grant.

[2] *MCI Telecommunications Corp. v. FCC*, 917 F. 2d 30 (DC Cir. 1990) (*Tariff 12 Remand*), *rev'g and remanding* AT&T Communications, Revisions to Tariff F.C.C. No. 12, Memorandum Opinion and Order, 4 FCC Rcd 4932 (*Tariff 12 Order*), *recon. denied*, 4 FCC Rcd 7928 (1989).

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
September 27, 1990

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Merrell Hansen, Vice President
Pacific and Southern Company, Inc.
Licensee, Radio Station KSD-FM
10155 Corporate Square - P.O. Box 12430
St. Louis, MO 63132

Dear Mr. Hansen:

This letter constitutes a Notice of Apparent Liability for a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules.

On October 26, 1989, we asked for your comments concerning a complaint received by the Commission alleging that on September 28, 1987, KSD-FM broadcast indecent material. The broadcast, which occurred at 6:38 a.m., contained excerpts from a *Playboy* magazine account of the alleged rape of Jessica Hahn by the Rev. Jim Bakker (see transcript attached).

Your November 22, 1989, response to our letter of inquiry concerning this matter explains the context surrounding the broadcast as banter by two on-air personalities reflecting public concern, criticism, and curiosity about a public figure whose reputedly notorious behavior was a widespread media issue at the time. Apparently, the station employees who read the material on the air believed its explicitness was justified because the public was interested in the events described in the magazine, particularly the details that might reveal more about the persons involved and why they behaved as they did. You state that station management, not having been consulted in advance of the broadcast, admonished the station employees who aired the material. Nevertheless, you assert that the material, while in poor taste, was not "patently offensive" so as to bring it within the meaning of the Commission's definition of indecency: "We believe such an issue-related broadcast should be distinguished as a matter of law from the juvenile locker room jokes and sexually-exploitive songs which have formed the basis for recent Commission indecency decisions."

Section 1464 of Title 18 of the United States Code prohibits utterances of "any obscene, indecent or profane language by means of radio communication." Pursuant to Sections 312(a)(6) and 503(b)(1)(D) of the Communications Act, the Commission has statutory authority to take appropriate administrative action when licensees broadcast material in violation of 18 U.S.C. § 1464. The Commission has defined indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs"; such material may not be broadcast when there is a reasonable risk that children may be in the audience. In *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978), the Supreme Court upheld the Commission's authority to regulate indecent broadcasts and rejected the argument that the Commission's definition, essentially unchanged from the one used today, was unconstitutionally vague. *See also Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988).

We believe that the subject broadcast fits squarely within the definition of indecency quoted above. The on-air reading contained lurid language concerning sexual activities and organs and occurred at a time of day when children were likely to have been in the listening audience. Moreover, while the newsworthy nature of broadcast material and its presentation in a serious, newsworthy manner would be relevant contextual considerations in an indecency determination, they are not, in themselves, dispositive factors. Analogously, we stated in *Infinity Broadcasting Corp. of Pa.*, 3 FCC Rcd 930, 932 (1987), that the merit of a work is "simply one of many variables" that make up a work's context; it will not be singled out so as to support an approach "that would hold that if a work has merit, it is *per se* not indecent." In the instant case, although the program aired by KSD-FM arguably concerned an incident that was at the time "in the news," the particular material broadcast was not only exceptionally explicit and vulgar, it was, as the attached transcript reveals, presented in a pandering manner. In short, the rendition of the details of the alleged rape was, in context, patently offensive.

Thus, it appears that on September 28, 1987, at 6:38 a.m., Station KSD-FM violated 18 U.S.C. § 1464 by airing indecent programming during daytime hours. Accordingly, pursuant to Section 503(b) of the Communications Act, Pacific and Southern Company, Inc., is hereby advised of its apparent liability for a forfeiture of two thousand dollars ($2,000). The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Act.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

KSD - FM Transcript

6:38 am 9/28/87

JC: Hi, Hi, 93.7 KSD-FM, 6:38 on the breakfast club, it's Monday, you know, we're just kind of laid back, kick backed.

JOE: Besides we've been away from the controls for a while, so uh . . . .

JC:

* * *

Gene Schalet, from the Today Show on with us this Friday morning. He is a . . . .

DJ: He is a (mixed conversation with JC) . . .

JC: He is a die-hard Mets fan and we will be abusing Gene on the phone this Friday morning. More about that later.

Ah, I've got this Jessica Hahns interview here in Playboy and uh, although I'm going to do a lot of it, it will uh, I will tell you a lot about this thing later, I just want to read one, one little segment here to you which I, which I, started reading last night.

JOE: Yea, and I was going to bring in the Penthouse interview but the Penthouse one supposedly was just some older transcripts and it's about the same thing anyway, so . . .

JC: Yea.

JOE: Really need one version.

JC: Trying to find a, the story here, da, da, yea, page 178, is where the good part continues here. Da, da, da, da . . .

JOE: Although this one didn't have the thing about ah, ah, Tammy Bakker.

JC: Yea, well this is pretty cool here, hold it, wait until I find this for you here. Ahhhhhh, da, da, da, da, da, da, da, da, da . . . I think I'm finding it right here. Oh, yea, okay here we go. (Clearing his throat) "This is when Jim Bakker is in the room." Okay. "Hahn, yea, so he pulls off the bedspread. First thing after he does that he says I hate bedspreads." Good line, good opening line. "Then he turns to me . . . I have a plum dress, and it was wrapped, uh, with a sash that uh, was untied. Was it a sexy dress. I didn't own many dresses, that was my prettiest, my pastor's wife bought it for me" (giggle) "and I had worn it to church sitting up front" . . . Okay, "What happened next? By now the guy is on top." She's talking about Jim Bakker. "He has managed to completely undress me and he's sitting on my chest and he's starting to put pillows underneath my back. He's really pushing himself, I mean the guy was forcing himself. He put his penis in my mouth and I was just starting to cry at that point, because I couldn't believe, I just started to realize everything that was happening. So I'm crying, tears are coming, and he is letting go." Now here's the person doing the . . . .

JOE: (Starting to laugh)

JC: Here's the person doing the, I know the foreshadowing is not too particularly good here. "What do you mean he was letting loose? Hahn - the guy came in my mouth. Then there's tears rolling down my face. Okay, I am as limp as I can be. He still going on, in other words he's, he's not seeing me respond. At this point you just don't feel. There's nothing left. So the guy moves down and he sees that I am crying. I'm not in my right mind now. My neck hurts, my throat hurts, my head feels like it's going to explode, but he's frustrated and determined, determined enough that within minutes he's inside me and he's on top and he's holding my arms. He has these pillows underneath me, so he's just into this, he's inside me now this is going on. And I'm pushing him away. You know every time I did that it seemed to bring him on more and he was talking off the wall. Saying what? Saying, when you help the shepherd, you're helping the sheep. Crazy stuff."

JOE: Baaaa (sheep sounds)

JC: We'll uh, we'll do more of this later. But---

DJ: Do we have to?

JC: I was reading this last night and I was getting sick.

JOE: Yea, I know.

JC: This was rape.

JOE: Yea, really.

JC: This was not, this was not some guy who just had like a little bit of a twist in a hotel room with a church secretary. This was rape!

JOE: Yea.

JC: Well, pretty incredible you know, because we've been making jokes about all this . . . .

JOE: Yea, don't you ever come around here Jim Bakker or we're going to cut that thing off.

JC: Huh, ah, you know, I mean it was like, you know we've been making jokes about this whole thing, then I read this thing and I couldn't believe it. So we'll read some more of that later. And then on a happier subject . . . *See* this is not out yet. I went to all the book stores yesterday trying to see if this thing is out, I was over at uh, at a couple of the malls, and nobody has this in yet. That's what she said.

DJ: It kind of makes you wonder who people are following really.

JC: Well, I think there is a natural curiosity about all of this too, though.

DJ: Yea.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
July 19, 1990

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Carl J. Wagner
Executive Vice President - Broadcasting
Great American Television and Radio Company, Inc.
Licensee, Radio Stations WFBQ(FM) and WNDE(AM)
1718 Young Street
Cincinnati, OH 45210

Dear Mr. Wagner:

This letter constitutes a Notice of Apparent Liability for forfeiture issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules.

On August 24, 1989, we asked for your comments concerning complaints received by the Commission alleging that portions of the "Bob and Tom Show" (broadcast by WFBQ(FM) and simulcast on WNDE(AM), Indianapolis, Indiana) contained indecent material. The broadcasts at issue occurred from 6:00 to 10:00 a.m. on June 29, September 14, September 25, and October 16, 1987. On January 17, 1990, following your response, we asked for your comments concerning additional broadcasts of the 6:00 to 10:00 a.m. "Bob and Tom Show" on March 21 and April 13, 1989, as well as the repeat broadcast on August 25, 1989, of two passages cited in our initial letter of inquiry.

In response to our inquiries, you argue (by letters dated October 10, 1989, November 16, 1989, December 6, 1989, and February 6, 1990) that the complained of material, all of which was broadcast on co-owned WFBQ(FM) and WNDE(AM), was not indecent. Discussing the specific excerpts, you state that "Butch Beer" (Attachment 1), broadcast on June 29, 1987, and again on August 25, 1989, "had nothing to do with either excretion or sex." As for the other six passages cited, you describe them as, at most, "indirect, non-explicit, double-entendre, humor about sexual matters." You argue that the sexual references in those broadcasts were not "patently offensive" by community standards in the Indianapolis area, as demonstrated by poll results and affidavits from community leaders. You further argue that this material presents no danger to children and submit an affidavit from a clinical psychologist who opines that the specified material "is not offensive or harmful to young people under the age of 18."

You provide a fuller transcript of the cited "Elvis" excerpt and discuss the context of the program to show that, while a sexual meaning might be inferred out of context, no sexual meaning was intended, nor would such a meaning be reasonably understood from the material taken as a whole. You also describe your efforts to delete and garble possibly objectionable language in the "Candy Wrapper" broadcast (Attachment 1), and thereby distinguish your broadcast of the song from that of WIOD(AM), Miami, FL (see Notice of Apparent Liability to Cox Enterprises, Inc., dated October 26, 1989). And finally, you discuss the regional humor and innocent referents in "Power, Power, Power."[1]

You contrast the subject Great American broadcasts with the "raw and explicit language relating to sexual acts or organs" which the Commission considered indecent in its 1987 decisions. Instead, you liken the WFBQ/WNDE broadcasts to material aired by WTRG-FM, against which the Commission, in 1988, declined to take enforcement action because the lyrics were capable of both an innocent and a sexual meaning. You also cite Commission decisions in 1989 finding that certain broadcasts by KWTO-FM, WYSP, and KTVI-TV, were not indecent; you argue that a comparison of your broadcasts with those must lead to the conclusion that the WFBQ/WNDE material is also not indecent.

You state that the Commission's belated inquiry into the 1987 broadcasts[2] reflects a "bewildering and shifting enforcement standard." You describe your good faith efforts to comprehend the Commission's definition of indecency and to follow its rulings in this area, but you protest that the definition is unconstitutionally vague and "impossible for licensees to understand."

We address first the broader issues of the Commission's authority to take action against the broadcast of indecent material and its standards for doing so. Section 1464 of Title 18 of the United States Code prohibits utterances of "any obscene, indecent or profane language by means of radio communication." Pursuant to Sections 312(a)(6) and 503(b)(1)(D) of the Communications Act, the Commission has statutory authority to take appropriate administrative action when licensees broadcast material in violation of 18 U.S.C. § 1464. The Commission has defined indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs."

In *FCC v. Pacifica Foundation* ("*Pacifica*"), 438 U.S. 726 (1978), the Supreme Court upheld the Commission's authority to regulate indecent broadcasts and rejected the argument raised at that time that the Commission's definition, essentially unchanged from the one used today, was unconstitutionally vague. Furthermore, the United States Court of Appeals for the District of Columbia Circuit has upheld the Commission's authority to restrict, using the same definition of indecency, the broadcast of indecent material when there is a reasonable risk that children may be in the audience. *Action for Children's Television v. FCC* ("*ACT I*"), 852 F.2d 1332 (D.C. Cir. 1988). Accordingly, we find unpersuasive your contention that the broadcast indecency standard is impossible to understand or imprecise to the point of being unconstitutional.

In both *Pacifica* and *ACT I*, the definition of indecency included a "contemporary community standards for the broadcast medium" component based on the Commission's asserted expertise in ascertaining such standards for the broadcast medium. *See Infinity Broadcasting Corp. of Pa.*, 3 FCC Rcd 930, 933 (1987). These standards, used to determine compliance with the federal proscription on indecent broadcasts, cannot be determined by the popularity of particular programming among adults in a specific community; nor can such local popularity alter the

risk from exposure to indecent programming incurred by children who may be in the audience. Moreover, it is well established that protecting children from indecent material is a compelling governmental interest and courts have not questioned or expected proof on the issue of harm. *See Sable Communications of California v. FCC*, 109 S.Ct. 2829, 2836 (1989); *Pacifica*, 438 U.S. at 749-50.

Turning now to your discussion of the excerpts in question, we agree that, in the fuller contexts which you have provided, the "Elvis" and "Power, Power, Power" excerpts (the latter broadcast on two occasions) are not indecent. The surrounding contexts do not appear to provide a background against which a sexual import is inescapable.

However, we believe the remaining broadcasts cited ("Candy Wrapper," "Butch Beer," "Dick and Jane," and "Stroke Your Dingy") fit squarely within our definition of indecency quoted above, and that they each contained lewd and vulgar language dwelling on depictions or descriptions of sexual organs and activities. While the passages arguably consist of double entendre and indirect references, the language used in each passage was understandable and clearly capable of a specific sexual meaning and, because of the context, the sexual import was inescapable. [3] Further, while you attempted to garble the objectionable language in the "Candy Wrapper" song, our review indicates that you did not succeed in obscuring its patently offensive sexual import. *See Infinity Broadcasting Corp. of Pa.*, 2 FCC Rcd 2705 (1987), *recon.*, *Infinity Broadcasting Corp.*, 3 FCC Rcd 930 (1987), *aff'd in part and remanded in part sub nom. ACT I, supra*. We believe, therefore, that your broadcasts are distinguishable from those which the Commission found were not indecent.

Thus, it appears that on June 29 ("Butch Beer") and October 16, 1987 ("Candy Wrapper"), and on March 21 ("Dick and Jane"), April 13 ("Stroke Your Dingy"), and August 25, 1989 ("Butch Beer"), Stations WFBQ(FM) and WNDE(AM), Indianapolis, Indiana, violated 18 U.S.C. § 1464 by airing indecent programming between 6:00 and 10:00 a.m. Accordingly, pursuant to Section 503(b) of the Communications Act, Great American Television and Radio Company, Inc., is hereby advised of its apparent liability for a forfeiture of ten thousand dollars ($10,000). The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Act.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

ATTACHMENT 1

WFBQ (FM) and WNDE (AM) Indianapolis, IN (simulcast)

10-16-87

Tom: Play Candy Wrapper we haven't heard that in a long time.

(Song:) It was another pay day and I was tired of being a Mr. Goodbar, when I saw Miss Hershey standing behind the Powerhouse on the corner of Clark and 5th Avenue, I whipped out my whopper and whispered, Hey Sweettart, how'd you like to Crunch on my Big Hunk for a Million Dollar Bar? Well, she immediately (?) my Tootsie Roll and you know, it was like pure Almond Joy. I couldn't help but grab her delicious Mounds 'cause it was easy to see that this little Twix had the Red Hots. It was all I could do to hold back a Snicker and a Krackle as my Butterfinger went (?) her tight little Kit Kat, and she started to scream "Oh Henry!" "Oh Henry!" Soon she was (?) my Peter Paul and Zagnuts and I know it wouldn't be long before I blew my Milk Duds clear to Mars and gave her a taste of the old Milky Way. She asked if I was into M & M's and I said, Hey, Chicklet, no kinky stuff. I said, Look you little Reese piece, don't be a Zero, be a Life Saver, why don't you just take my Whatchamacallit and (?) your Bit-O-Honey. Ooh, what a piece of Juicy Fruit she was too. She screamed OH, Crackerjack? You're better than the Three Musketeers! As I (?) My Ding Dong, her Rocky Road and (?) her Peanut Butter Cup. Well, I was (?) Good and Plenty, and all of a sudden, my Starburst. Yeah, as luck would have it, she started to grow a bit Chunky and complained of a Wrigley in her stomach. Sure enough, 9 months later, out popped a Baby Ruth.

06-29-87 and 08-25-89

Introducing Butch beer, the first beer brewed for women by women. When you grab a Butch beer, you're taking hold of the Billie Jean King of beers. Fire brewed from the gushing waters of French Lick, Indiana. With Butch beer, you've got a beer that goes down easy. Taste it and you'll know why it's our personal best.

Go grab a Butch beer, and get an image. Go grab a Butch beer, at every scrimmage. Go grab a Butch beer, it goes down quicker, Go grab a Butch, as good as any liquor.

Butch beer, let everyone know you're more than just a woman, you're a gal who can take it like a man. Snatch a 12 pack off the shelf today and crack open a Butch. Just ask any woman, "On the whole, it's as good as any liquor."

Go grab a Butch Beer, the taste you'll savor, go grab a Butch beer, it's tuna flavored. Go grab a Butch beer, it goes down quicker, go grab a Butch, as good as any liquor.

Butch beer, strong enough for a man, but who needs one? Go for the gusto with a strapping belt of Butch beer. Sure it costs alot but don't dicker on the price, Butch beer. Come and find the Butch flavor, lickety split.

Go grab a Butch beer, and get an image. Go grab a Butch beer, at every scrimmage. Go grab a Butch beer, it goes down quicker, go grab a Butch, as good as any liquor.

Butch beer, brewed by Anhauser Busch, French Lick, Indiana, a division of Tie-One-On Industries, Beaver Falls, Pennsylvania.

The next time you're eating out, order a Butch

ATTACHMENT 2

WFBQ (FM) and WNDE (AM), Indianapolis, IN (simulcast)

March 21, 1989, Bob and Tom Show

Song: There were three young men who fell in love with Jane. Tom, Dick and Harry were their names. I am her only boyfriend each of them would boast. But she passed on Tom and Harry cause she liked Dick the most. Now she's got Dick in the palm of her hand. She likes to hold Dick. She likes to squeeze Dick. She likes to kiss Dick all of the time. Seems like Dick is always on her mind. Though Dick and Jane got married on that day. But their petty problem soon got in the way. Before long they were divorcing and Dick thought he'd get . . . but Jane took everything except for Muff their little cat. Now he's got Muff in the palm of his hands. He likes to grab muff. He likes to squeeze Muff. He likes to tease Muff all of the time. Seems like Muff is always on his mind.

Tom: (Singing) Don't miss the Q-95 Union Station. It's an egg drop hosted at noon by Vana. Vana will be dropping her eggs from her ovaries.

April 13, 1989, Bob and Tom Show

Song: Bob has a purple dingy. He's had it for a while. And when Bob takes his dingy out it always makes him smile. When Bob takes out his dingy he likes to sing this song. So come on everybody and won't you sing along. Stroke, stroke your dingy. Stroke, stroke your dingy. Stroke, stroke your dingy. Stroke, stroke, stroke.

When Bob was a teenager his mom said son beware. Your're playin with your dingy and you're palms are sporting hair. But Bobbie was a bad boy and his mom he didn't mind. Even when she said no Bob if you don't stop you'll go blind. Stroke, stroke your dingy. Stroke, stroke your dingy. Stroke, stroke your dingy. Stroke, stroke your dingy. Stroke, stroke, stroke.

One night Bob had been drinking. He got caught in some kelp. He couldn't get his dingy out. He yelled and yelled for help. And soon there came a mermaid and she whispered something soft. She grabbed his little dingy and she yanked his dingy off. Stroke, stroke your dingy. Stroke, stroke your dingy. Stroke, stroke, stroke.

Bob met with many women in many ports of call. But none would board his dingy cause his dingy was too small. But he had to dock his dingy so he paid a gal named Sal. Sal opened up her slip to him and gave Bob her canal. Now Bob his dingy's dry docked and he's not very pleased. Cause Sal's canal was full of crabs, his dingy's now diseased. And once again we're down to the chorus so can we all sing along? Everybody. Stroke, stroke your dingy. Stroke, louder. Stroke your dingy. Stroke, can we do it faster? Stroke your dingy. Stroke, stroke, stroke your dingy. Stroke. Everybody stroke it. Stroke your dingy. Stroke, stroke your dingy. Stroke. Faster. Stroke, stroke your dingy. Stroke, stroke your dingy. Stroke, stroke your dingy. Stroke, stroke, stroke.

FOOTNOTES

[1] You state that the rebroadcasts of "Power, Power, Power" and "Butch Beer" on August 25, 1989--the day after our first inquiry cited that material as possibly indecent--were made not in defiance of the Commission's action but rather in the interest of discussing, and informing listeners of, the material to which that morning's local newspaper had alluded in reporting the FCC's letter to WFBQ(FM) concerning its programming.

[2] You also imply that Great American Television and Radio Company, Inc. should not be held responsible for broadcasts aired prior to its acquisition of the stations on October 6, 1987. We decline, however, to absolve Great American based on such an ownership argument, particularly since the transferor licensee and the transferee licensee consisted of the same principals.

[3] Your apparent contention that the material broadcast by WFBQ/WNDE is not actionable because it is less graphic than that which the Commission has previously determined to be indecent is unavailing. Material which is indecent is not the less so, nor is it rendered immune to our enforcement authority, simply because it is less egregious than material we have heretofore found actionable.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Liability of
Nationwide Communications Inc.

Licensee of Radio Station
KLUC-FM, Las Vegas, NV

for a Forfeiture

MEMORANDUM OPINION AND ORDER

Adopted: April 19, 1990
(Not Released; mailed to licensee on April 19, 1990)

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief of the Mass Media Bureau acting pursuant to authority delegated by Section 0.283 of the Commission's Rules, has under consideration (1) a $2,000 Notice of Apparent Liability (NAL) issued October 26, 1989, to Nationwide Communications Inc. (Nationwide), licensee of Station KLUC-FM, Las Vegas, Nevada; and (2) Nationwide's response to the NAL dated November 29, 1989.

2. The forfeiture was assessed for apparent violation of 18 U.S.C. § 1464, prohibiting the broadcast of indecent material.[1] Pursuant to Sections 312(a)(6) and 503(b)(1)(D) of the Communications Act of 1934, as amended, the Commission has statutory authority to take appropriate administrative action when licensees broadcast material in violation of 18 U.S.C. § 1464. The Commission has defined indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." In *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978), the Supreme Court upheld the Commission's authority to regulate indecent broadcasts under this same definition, and the United States Court of Appeals for the District of Columbia Circuit has upheld the Commission's authority to restrict the broadcast of indecent material when there is a reasonable risk that children may be in the audience. *Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988).

3. The complaint underlying the NAL alleged that on May 16, 1988, at 7:53 p.m., KLUC-FM aired a recording of the song "Erotic City" by Prince. After listening to the tape recording submitted by the complainant, Commission personnel determined that the broadcast of the lyrics (as transcribed in Attachment 1) apparently violated 18 U.S.C. § 1464.

4. Nationwide submits that the complaint underlying the NAL was deficient in that it failed to include a tape, transcript, or significant excerpt of the programming alleged to be indecent. According to Nationwide, the complainant admitted on November 17, 1989, that she did not, in fact, record the song in question directly from the station broadcast on May 16, 1988, at 7:53 p.m.; rather, she recorded it the following day from an album. Accordingly, argues Nationwide, there is no demonstration that the record "as actually broadcast by KLUC-FM" contained the alleged language and consequently the complaint should be dismissed.

5. Nationwide does not deny having broadcast the song "Erotic City" by Prince. It does, however, deny that the song it broadcast contained the lyrics reflected in Attachment 1. Specifically, Nationwide disputes two phrases in the Commission's transcript of the song, stating that the word "fuck" does not appear in the song as alleged. As supporting evidence, Nationwide submits an affidavit from Warner Bros. Records, which distributes "Erotic City" as well as other recordings by Prince, in which the Senior Director of Business Affairs states, "I have listened to this recording again in connection with [the NAL]. Insofar as WBR is aware no definitive transcript exists of the lyrics of the song . . . in my opinion . . . [n]either the word 'fuck' nor any other indecent language is used . . . ." He states his belief that in this song Prince "quite consciously" used the word "funk" and not "fuck." KLUC-FM management personnel have also indicated that they reviewed the record before its airing and believed the lyrics did not contain the word "fuck." On that basis, Nationwide argues that its broadcast of "Erotic City" was not indecent. Finally, Nationwide argues that if the Commission finds the lyrics indecent, it should consider good faith efforts by the station management, prior to broadcast, to evaluate whether or not the lyrics were indecent based on their honest belief that the words in the song were those in Attachment 2 (the disputed lyrics are in boldface).

6. Normally, in evaluating indecency complaints, it is our policy to insist upon supporting evidence taken directly from the offending broadcast. This approach both increases the reliability of the complaint as a basis for possible Commission inquiry or action and affords us an opportunity to consider the allegedly indecent material in context. Where, however, the goals of this internal Commission procedure can be achieved by other means, we will not be diverted from pursuing an otherwise legitimate complaint by the lack of direct, off-air recordings or transcripts. Here, the complainant asserts personal knowledge of the broadcast of a widely available, commercial *recording* of a song. There is no dispute as to the identity of the song in question. Nationwide does not claim that different recordings of the song exist, with different lyrics, nor does it allege that it purposely or inadvertently changed the recording before airing it. Therefore, we have no reason to conclude that the recording upon which the NAL was based was not identical to the one that KLUC-FM aired.[2] Given the recorded nature of the material involved and the absence of any allegation that the particular context in which this song was played somehow redeems its explicit, sexual language, we find no basis on which to defer action.

7. As to the disputed lyrics, the Commission's staff listened to the tape recording provided by the complainant and concluded that the word "fuck," as noted in Attachment 1, is used repeatedly in the song. Our understanding in this regard is buttressed by the filings of other licensees in unrelated indecency proceedings involving different material. In those proceedings, licensees have submitted the lyrics of "Erotic City"--identical, or substan-

tially similar, in form to those in Attachment 1--and argued that the song was commonly broadcast by others and that it was much worse than the material they had aired. In fact, the transcript of "Erotic City" sent with the NAL was supplied by just such a licensee. Furthermore, the affidavit submitted by Nationwide to contest the lyrics in Attachment 1 provided no extrinsic evidence (*e.g.*, songsheets, recording session notes, or other material) to substantiate its claim. Such evidence, if it existed, would presumably have been available to the affiant or others in the recording industry and could have been filed, yet no such information was provided. Rather, the affiant relies entirely on his personal opinion and belief. Under such circumstances, we are not persuaded that our understanding of the song is incorrect and conclude that the broadcast in question fits squarely within our definition of indecency quoted above.

8. A licensee's good faith conduct is no defense to a statutory violation for purposes of Commission enforcement action but may affect the sanction imposed. *Infinity Broadcasting Corp.*, 3 FCC Rcd 930, 933 (1987), *aff'd in part and remanded in part sub nom. Action for Children's Television v. FCC*, *supra*. The Commission made it clear by its enforcement actions in 1987 that the kind of material before us here is actionable, and that licensees will be held responsible for erroneous good-faith judgments which stray this far afield in their indecency determinations.

9. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, IT IS ORDERED, that Nationwide Communications Inc., licensee of Radio Station KLUC-FM, Las Vegas, Nevada, FORFEIT to the United States the sum of two thousand dollars ($2,000) for its violation of Section 1464 of Title 18 of the United States Code. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument payable to the Federal Communications Commission. In regard to this forfeiture proceeding, the licensee may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Attachment 1

EROTIC CITY

ALL OF MY PURPLE LIFE
I'VE BEEN LOOKIN' FOR A DAME
THAT WOULD WANT TO BE MY WIFE
THAT WAS MY INTENTION BABE

IF WE CANNOT MAKE BABIES
MAYBE WE CAN MAKE SOME TIME
FUCK SO PRETTY YOU AND ME
EROTIC CITY COME ALIVE

WE CAN FUCK UNTIL THE DAWN
MAKIN LOVE TIL CHERRIES GONE
EROTIC CITY CAN'T YOU SEE
FUCK SO PRETTY YOU AND ME

EVERY TIME I COMB MY HAIR
THOUGHTS OF YOU GET IN MY EYES

YOU'RE A SINNER I DON'T CARE
I JUST WANT YOUR CREAMY THIGHS

IF WE CANNOT MAKE BABIES
MAYBE WE CAN MAKE SOME TIME
FUCK SO PRETTY YOU AND ME
EROTIC CITY COME ALIVE

WE CAN FUCK UNTIL THE DAWN
MAKIN LOVE TIL CHERRIES GONE
EROTIC CITY CAN'T YOU SEE
FUCK SO PRETTY YOU AND ME

* * *

ALL OF MY HANGUPS ARE GONE
I WISH YOU FELT THE SAME
WE CAN FUCK UNTIL THE DAWN
(UNTIL THE DAWN)
HOW I WISH YOU WERE MY DAME
(REPEAT)

IF WE CANNOT MAKE BABIES
MAYBE WE CAN MAKE SOME TIME
FUCK SO PRETTY YOU AND ME
EROTIC CITY COME ALIVE

WE CAN FUCK UNTIL THE DAWN
MAKIN LOVE TIL CHERRIES GONE
EROTIC CITY CAN'T YOU SEE
FUCK SO PRETTY YOU AND ME

WOOOOO WOOOOO WOOOOO WOOOOO
WOOOOO WOOOOO WOOOOO WOOOOO
(REPEAT)
BABY . . . YOU'RE SO . . . CREAMY

IF WE CANNOT MAKE BABIES
MAYBE WE CAN MAKE SOME TIME
FUCK SO PRETTY YOU AND ME
EROTIC CITY COME ALIVE

WE CAN FUCK UNTIL THE DAWN
MAKIN LOVE TIL CHERRIES GONE
EROTIC CITY CAN'T YOU SEE
FUCK SO PRETTY YOU AND ME

IF WE CANNOT MAKE BABIES
MAYBE WE CAN MAKE SOME TIME

FUCK SO PRETTY YOU AND ME
EROTIC CITY COME ALIVE

WE CAN FUCK UNTIL THE DAWN
MAKING LOVE TIL CHERRIES GONE
EROTIC CITY CAN'T YOU SEE
FUCK SO PRETTY YOU AND ME

EROTIC CITY . . . YEAH

Attachment 2

EROTIC CITY

ALL OF MY PURPLE LIFE
I'VE BEEN LOOKIN' FOR A DAME
THAT WOULD WANT TO BE MY WIFE
THAT WAS MY INTENTION BABE

IF WE CANNOT MAKE BABIES
MAYBE WE CAN MAKE SOME TIME
THOUGHTS OF PRETTY YOU AND ME,
EROTIC CITY COME ALIVE

MAKING FUNK UNTIL THE DAWN
MAKIN LOVE TIL CHERRIES GONE
EROTIC CITY CAN'T YOU SEE
THOUGHTS OF PRETTY YOU AND ME

EVERY TIME I COMB MY HAIR
THOUGHTS OF YOU GET IN MY EYES
YOU'RE A SINNER I DON'T CARE
I JUST WANT YOUR CREAMY THIGHS

IF WE CANNOT MAKE BABIES
MAYBE WE CAN MAKE SOME TIME
THOUGHTS OF PRETTY YOU AND ME
EROTIC CITY COME ALIVE

MAKING FUNK UNTIL THE DAWN
MAKIN LOVE TIL CHERRIES GONE
EROTIC CITY CAN'T YOU SEE
THOUGHTS OF PRETTY YOU AND ME

* * *

ALL OF MY HANGUPS ARE GONE
I WISH YOU FELT THE SAME
MAKING FUNK UNTIL THE DAWN
(UNTIL THE DAWN)
HOW I WISH YOU WERE MY DAME
(REPEAT)

IF WE CANNOT MAKE BABIES
MAYBE WE CAN MAKE SOME TIME
THOUGHTS OF PRETTY YOU AND ME
EROTIC CITY COME ALIVE

MAKING FUNK UNTIL THE DAWN
MAKIN LOVE TIL CHERRIES GONE
EROTIC CITY CAN'T YOU SEE
THOUGHTS OF PRETTY YOU AND ME

WOOOOO WOOOOO WOOOOO WOOOOO
WOOOOO WOOOOO WOOOOO WOOOOO
BABY . . . YOU'RE SO . . . CREAMY

IF WE CANNOT MAKE BABIES
MAYBE WE CAN MAKE SOME TIME
THOUGHTS OF PRETTY YOU AND ME
EROTIC CITY COME ALIVE

MAKING FUNK UNTIL THE DAWN
MAKIN LOVE TIL CHERRIES GONE
EROTIC CITY CAN'T YOU SEE
THOUGHTS OF PRETTY YOU AND ME

IF WE CANNOT MAKE BABIES
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EROTIC CITY COME ALIVE

MAKING FUNK UNTIL THE DAWN
MAKING LOVE TIL CHERRIES GONE
EROTIC CITY CAN'T YOU SEE
THOUGHTS OF PRETTY YOU AND ME

EROTIC CITY . . . YEAH

FOOTNOTES

[1] "Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than $10,000 or imprisoned not more than two years, or both." 18 U.S.C. § 1464.

[2] In contrast, there are often many different "cuts" of motion pictures available for broadcast by television stations, which may themselves make further edits. For this reason, in such cases we would normally require the submission of a tape of the actual broadcast and would not consider a commercially available videotape of the theatrically released version of the film to be appropriate evidence.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
September 29, 1989

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Legacy Broadcasting of Detroit, Inc.
Licensee of Radio Station WLLZ(FM)
6340 Sunset Boulevard
Los Angeles, CA 90028

Dear Licensee:

This letter constitutes a Notice of Apparent Liability for a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules.

The Commission has received information indicating that Radio Station WLLZ(FM), Detroit, MI, may have violated 18 U.S.C. § 1464 by broadcasting a musical recording entitled "Walk with an Erection" on January 21, 1988, at about 9:00 a.m. A transcript of the lyrics of this song, made from a tape recording submitted by the complainaint, is enclosed.

Pursuant to 47 U.S.C. §§ 312(a)(6) and 503(b)(1)(D), the Commission has statutory authority to take appropriate administrative action when licensees broadcast material in violation of 18 U.S.C. § 1464, which provides criminal penalties for anyone who "utters any obscene, indecent or profane language by means of radio communication."

The Commission has defined indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." The United States Court of Appeals for the District of Columbia Circuit has upheld the Commission's authority to restrict the daytime broadcast of indecent material. *Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988).

We believe that the subject broadcast of "Walk with an Erection" was indecent and, because it was broadcast during daytime hours (9:00 a.m.), is legally actionable. Thus, it appears that on January 21, 1988, Station WLLZ(FM) violated 18 U.S.C. § 1464 by airing indecent programming during the daytime hours. Accordingly, pursuant to Section 503(b) of the Communications Act, Legacy Broadcasting of Detroit, Inc., is hereby advised of its apparent liability for a forfeiture of two thousand dollars ($2,000). The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Act.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Alex D. Felker
Chief, Mass Media Bureau

ATTACHMENT

WALK WITH AN ERECTION

(To the tune of "Walk Like an Egyptian")

He puts the Penthouse in his desk
He's got big muscles in his wrist
He holds his organ in his fist
He gives his pink dolphin(?) a mighty twist
He wears his trousers way too tight
Hoping that he'll score big tonight
He keeps his briefcase in his lap
Or else you know that his face gets slapped

All the girls in the office they say, "Hard-on, hard-on, beg my pardon"
Walk with an erection

* * *

All the boys from Maine to Mexico
Are all obsessed with sex and blow
Like the cop who carries a big night stick
It's just an extension of his wick
He busts those hookers on the block
Unless they give service 'round the clock
Goes home to wife and kids so nice
Although he gets off on working vice

* * *

All the girls from B.U. they say, "Hard-on, hard-on, beg my pardon"
Walk with an erection
Walk with an erection

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
October 26, 1989

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

KFI, Inc., Licensee
Radio Station KFI-AM
610 South Ardmore Avenue
Los Angeles, CA 90005

Dear Licensee:

This letter constitutes a Notice of Apparent Liability for a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules.

The Commission has received information indicating that Radio Station KFI-AM, Los Angeles, CA, may have violated 18 U.S.C. § 1464 by broadcasting allegedly indecent material during the Tom Leykis Show between 11 a.m. and 3 p.m. on November 12, 1988; at 3 p.m. on January 6, 1989; and at 11 a.m. on April 8, 1989. Transcripts of the allegedly indecent broadcasts are attached.

Pursuant to 47 U.S.C. §§ 312(a)(6) and 503(b)(1)(D), the Commission has statutory authority to take appropriate administrative action when licensees broadcast material in violation of 18 U.S.C. § 1464, which provides criminal penalties for anyone who "utters any obscene, indecent or profane language by means of radio communication."

The Commission has defined indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." The United States Court of Appeals for the District of Columbia Circuit has upheld the Commission's authority to restrict the broadcast of indecent material at times when there is a reasonable risk that children may be in the audience. *Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988).

We believe that the subject broadcasts from the Tom Leykis Show were indecent and, because they aired at times when there was a reasonable risk that children may have been in the audience (between 11 a.m. and 3 p.m., approximately), are legally actionable. Thus, it appears that on November 12, 1988, January 6, 1989, and April 8, 1989, Station KFI-AM violated 18 U.S.C. § 1464 by airing indecent programming. Accordingly, pursuant to Section 503(b) of the Communications Act, KFI, Inc., is hereby advised of its apparent liability for a forfeiture of six thousand dollars ($6,000). The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Act.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Transcripts - Radio Station KFI-AM, Los Angeles, CA
Tom Leykis Show (telephone talk)

November 12, 1988 11:00 a.m. - 3:00 p.m.

Tom Leykis: TL
Female Caller: FC

FC: One night he took me to the studio where a friend of his was recording, doing some dubbing and stuff, a movie he scored. I'll tell you who it is off the air too, but I think he knows who he is and, ah, so anyway I got into the booth and gave him head.

TL: You did.

FC: Yeah, it was.

TL: Wait, this was the other person?

FC: (Unintelligible) No. No. No.

TL: Oh no, it was him?

FC: Yeah.

TL: This was the guy you've been seeing?

FC: Right. I got into this booth, you couldn't see, you know, and I gave him head while he was doing the dubbing and all these people were sitting around, but no one knew.

TL: No one knew.

* * * *

FC: I'm a breeder-exhibitor of very large dogs and I have five beautiful dogs and my male, sometimes when I groom him, I'll masturbate him and he's just so big and sweet and he really likes it. It's really weird, I know. I could never tell anybody.

TL: Oh boy, now, now wait a minute. You masturbate just one dog or do you do this with more than one?

FC: Just the male. I have a big champion male and he's just beautiful and you know, I'll pet him and I don't know, he really likes it.

TL: He doesn't like, bite you or anything?

FC: No, he's my sweetheart.

TL: Now, are you married?

FC: No, oh no.

TL: Do you have a boy friend?

FC: Well, I do but I have a hard time because I spend so much time with my dogs and at dog shows and you know I have a daughter and men are really kinda my low priority right now, but do I have a boy friend, in a way.

TL: And he doesn't know about this?

FC: No, of course not. No.

TL: Now, do your enjoy masturbating your dog?

FC: Well, I do because it's, he likes it, I mean, you should see the expression on his face.

TL: Oh, really?

FC: Yeah.

TL: Does he make any noise?

FC: Well, kind of a gurgling sound.

TL: Oh, do it for us.

FC: No.

TL: Come on Catherine, what does he sound like, I want to hear it.

FC: Oh, it's kind of like, I don't know, it's hard to, but, to duplicate that, but

TL: Oh, it's hard to duplicate. Are you going to say something else?

FC: No

TL: Now let me ask you the big question here Catherine, do you enjoy doing this?

FC: Yes, I do.

TL: How much do you enjoy it?

FC: I enjoy it a lot but I don't do it that often, maybe once a month or something like that, whenever I groom him.

TL: I was going to ask you, does the dog reciprocate, but.

FC: No, no, no, no, not at all.

TL: Not at all, huh.

January 6, 1989 at 3:00 p.m.

Tom Leykis: TL

Jim Boyd: JB

TL: _____ in the afternoon. Tom Leykis, the all new KFI-AM 640, talking to Jim Boyd, founder and president of the Hung Jury.

JB: If you see a large limp erection either whether it's white or black, what you have to bear in mind is that the longer it is limp does not mean the longer it is goes up hard . . . When a limp penis is short, say four, four and a half inches, it can sometimes go twice that length. But say a limp penis is about nine inches, it may only go up one inch or so more . . . Warren Beatty's been talked about by Britt Ekland and lots of other people. I know a couple of women who've been to bed with Warren Beatty. Warren Beatty is hung over twelve inches . . . Uncle Miltie is fourteen inches . . . Suddenly they found that women were coming in and expressing on their membership forms that they wanted men who were big . . . More they discovered that size did make a difference to their vaginal opening, to their clitoral stimulation.

TL: John F. Kennedy, what was the story on him for example?

JB: Well you know, of course, he was introduced to Marilyn Monroe before she died. Marilyn Monroe was into well-hung men. She'd had an affair with Milton Berle. She was married to Joe DiMaggio, who was huge . . . When Frank Sinatra, who is big himself, a twelve incher . . . Lyndon Baines Johnson, out distanced him . . . Johnson supposedly was hung like a horse, twelve or thirteen inches.

April 8, 1989 at 11:00 a.m.

Tom Leykis: TL

Caller #6: C#6

Caller #7: C#7

TL: My name is Tom Leykis. This is Talk Radio KFI-AM 640 . . . What is the grossest thing you've ever put in your mouth . . . Let's leave genitalia out of the program today. That's obvious.

* * * *

C#6: . . . And she didn't know anything about douching, Okay?

TL: Yea.

C#6: And I didn't know anything about it either.

C#7: All women divide men into categories of, and I'll just say, either firemen's hats or anteaters. So I have two words to describe what this one was, and all the women will understand, anteater smegma.

TL: Oh man!

C#7: Disgusting

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
October 26, 1989

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Guy Gannett Publishing Company, Licensee
Radio Station WZTA-FM
4330 N.W. 207th Drive
Miami, FL 33055

Dear Licensee:

This letter constitutes a Notice of Apparent Liability for a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules.

The Commission has received information indicating that Radio Station WZTA-FM, Miami, FL, may have violated 18 U.S.C. § 1464 by broadcasting a musical recording entitled "Penis Envy," aired during the Neil Rogers Show at 6 a.m. on or about October 27, 1987. A transcript of the lyrics of this song, made from a tape recording submitted by the complainant, is enclosed.

Pursuant to 47 U.S.C. §§ 312(a)(6) and 503(b)(1)(D), the Commission has statutory authority to take appropriate administrative action when licensees broadcast material in violation of 18 U.S.C. § 1464, which provides criminal penalties for anyone who "utters any obscene, indecent or profane language by means of radio communication."

The Commission has defined indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." The United States Court of Appeals for the District of Columbia Circuit has upheld the Commission's authority to restrict the broadcast of indecent material at times when there is a reasonable risk that children may be in the audience. *Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988).

We believe that the subject broadcast of "Penis Envy" was indecent and, because it was broadcast at a time when there was a reasonable risk that children may have been in the audience (6 a.m.), is legally actionable. Thus, it appears that on or about October 27, 1987, Station WZTA-FM violated 18 U.S.C. § 1464 by airing indecent programming. Accordingly, pursuant to Section 503(b) of the Communications Act, Guy Gannett Publishing Company is hereby advised of its apparent liability for a forfeiture of two thousand dollars ($2,000). The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Act.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

PENIS ENVY SONG

If I had a penis, I'd wear it outside
In cafes and car lots, with pomp and with pride
If I had a penis, I'd pamper it proper
I'd stay in the tub and use me as the stopper.

If I had a penis, I'd take it to parties
I'd stretch it and stroke it and shove it at smarties
I'd take it to pet shows and teach it to stay
I'd stuff it in turkeys on Thanksgiving day.

I'd rival my bodies in sports cars with stick shifts (?)
I'd shower my spire with girlies and gifts
I'd peek around corners, I'd aim at my toilet
I'd poke it at foreigners, and soap it and oil it.

If I had a penis, I'd run to my mother
Comb out the hair and compare it to brother
I'd lance her, I'd knight her, my hands would indulge
Pants would seem tighter and buckle and bulge.
A penis to plunder, a penis to push
'Cause one in the hand is worth one in the bush
A penis to love me, a penis to share
To pick up and play with when nobody's there.
I'd sit like a guy, I'd straddle the chair
I'd play with my fly, I'll beat it with care
I'd dip it in chocolate, I'd stick it in sockets
I'd stroll to the movies with hands deep in pockets
I'd stick it in vacuums on-on verandas
Gas-guzzling Volvos and poodles and pandas
And puddles and drainpipes and doggies and
ditches-and potholes and bottles and bitches
Zucchinis and zebras, tomatoes, tomatoes,
And pineapples, pumpkins, and gulches and grottos
And melons and marshmallows, gloves and gorillas
Slurpees and slippers, Chinooks (North American Indians) and chinchillas.

A penis to plunder, a penis to push,
'Cause one in the hand is worth one in the bush,
A penis to love me, a penis to share,
To pick up and play with when nobody's there.

If I had a penis, I'd climb every mountain
I'd force it on females, I'd pee like a fountain,
If I had a penis, I'd still be a girl
But I'd make much more money and conquer the world.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
October 26, 1989

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Michael J. Faherty
Executive Vice President-Radio
Cox Broadcasting Division
Cox Enterprises, Inc.
1400 Lake Hearn Drive, N.E.
Atlanta, GA 30319

In re: WIOD, Miami, FL

Dear Mr. Faherty:

This letter constitutes a Notice of Apparent Liability for a forfeiture for WIOD, Inc., licensee of Radio Station WIOD, Miami, FL, pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules.

On April 17, 1989, John B. Thompson filed a complaint, supported by tape recordings and transcripts, alleging that WIOD had broadcast indecent material, including "Jet Boy, Jet Girl" on November 7, 1988; "Penis Envy" on November 8, 1988; "Candy Wrapper" on November 30, 1988; "Butch Beer Commercial" on December 6, 1988; and "Walk with an Erection" on December 20, 1988. Transcripts of this material, all from the "Neil Rogers Show" aired between 10 a.m. and 2 p.m., are attached hereto.

On September 28, 1989, you submitted a response to the various indecency allegations raised by Mr. Thompson. Except for the five broadcasts described in the preceding paragraph, we agree with your assertions that Mr. Thompson's allegations of indecency fail to establish a basis for Commission action. Therefore, we discuss herein only your arguments that apply to the five broadcasts identified above.

You deny that the "Butch Beer Commercial" contains descriptions of sexual or excretory activities or organs. It appears to us, however, that the references to sexual activities are clear and that the material in the attachment is, in context, indecent, its lesbian theme only providing the background against which to interpret the language in its unambiguous and explicit intent.

You argue, with respect to "Candy Wrapper," that the sexual innuendo is indirect and therefore not capable of only one clearly sexual meaning. It appears to us, however, that, notwithstanding the use of candy bar names to symbolize sexual activities, the titillating and pandering nature of the song makes any thought of candy bars peripheral at best. Thus, we believe the song's description of sexual activities is the primary focus and your claim of ambiguity has little merit.

You argue that "Jet Boy, Jet Girl" is not indecent because, while its subject matter of homosexuality is clear, its description of sexual organs and activities is no more than innuendo and cannot therefore be patently offensive. It appears to us, however, that the language in the attached transcript makes clear reference to sexual activities in a way that is patently offensive, even if the song's homosexual theme were ignored or changed.

You admit that "Walk with an Erection" and "Penis Envy" contain more explicit language, but you assert that these songs are not pandering or titillating or vulgar. You also argue that the humorous nature of "Penis Envy" somehow makes it less than patently offensive. We believe, however, that it is not necessary to find that the material is pandering or titillating in order to find that its references to sexual activities and organs are patently offensive. *See, e.g., Infinity Broadcasting Corp. of Pa.*, 2 FCC Rcd 2705 (1987), *recon., Infinity Broadcasting Corp.*, 3 FCC Rcd 930 (1987), *aff'd in part and remanded in part sub nom. Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988) (" *ACT* "). Moreover, humor is no more an absolute defense to indecency, *see FCC v. Pacifica Foundation*, 438 U.S. 726 (1978) ("*Pacifica* "), than is music or any other one component of communication.

You argue, in general, that the Commission's definition of indecency is vague; that the station acted reasonably to conclude that the subject material was not indecent (based in part on the Commission's year-long inaction with respect to some of the subject material aired on another station) and therefore could be aired with impunity; that music constitutes but a small portion (less than 5%) of the Neil Rogers Show, which you claim does not provide a context dwelling on sexual themes; that the material at issue here is less graphic, vulgar and lewd than that found to be indecent by other Commission decisions to be used as guidance and was not presented in the context of extended sexual discussions as was the *Infinity* material, *supra;* and that the WIOD material uses "acceptable, commonly used slang, not the more offensive and vulgar slang previously found to be indecent." Finally, you argue at some length that "contemporary community standards for the broadcast medium," as evidenced by, among other things, the popularity of the Neil Rogers Show, support your conclusion that the subject material is not patently offensive but rather is widely accepted.

Section 1464 of Title 18 of the United States Code prohibits utterances of "any obscene, indecent or profane language by means of radio communication." Pursuant to Sections 312(a)(6) and 503(b)(1)(D) of the Communications Act, the Commission has statutory authority to take appropriate administrative action when licensees broadcast material in violation of 18 U.S.C. § 1464. The Commission has defined indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." In *Pacifica, supra*, the Supreme Court upheld the Commission's authority to regulate indecent broadcasts and rejected the argument raised at that time that the Commission's definition, essentially unchanged from the one at use today, was unconstitutionally vague. Furthermore, the United States Court of Appeals for the District of Columbia Circuit has recently upheld the Commission's authority to restrict the daytime broadcast of indecent material. *ACT, supra.*

We believe that the subject broadcasts all fit squarely within our definition of indecency quoted above. Even in the cases of innuendo, not only was the language understandable and clearly capable of a specific sexual meaning but, because of the context, the sexual import was inescapable. *See Infinity, supra*. Reasonableness of conduct is no defense to a statutory violation for purposes of Commission enforcement action but may affect the sanction imposed. *Infinity*, 3 FCC Rcd at 933. As for the station's reliance on Commission inaction, we have repeatedly stated that, mindful of the sensitive First Amendment issues involved in indecency rulings, we strive to proceed with caution and careful deliberation, sometimes resulting, unfortunately, in enforcement actions and opinions that reach year-old broadcasts. Whether or not the context of the entire Neil Rogers Show dwelt on sexual themes, the songs themselves provide sufficient context to determine their patent offensiveness and can be considered discrete units for purposes of this action. And, whether or not the material here at issue is less graphic than that previously found indecent by the Commission, we do not accept constraints on our discretion to pursue violations less egregious than others may have been.

Even if we accept your argument (to the extent that it is distinguishable from your assertions about "contemporary community standards") that the subject broadcasts use "acceptable slang," we do not believe, in this context of overt sexual themes and descriptions of sexual activities, that the songs are any less patently offensive. And as to your arguments concerning contemporary community standards for the broadcast medium, the Commission has maintained that it has expertise in ascertaining such standards and therefore its pronouncements in this area are not, as you claim, arbitrary and capricious for failure to incorporate objective evidence of ratings indicating popularity in the relevant listening market. *See, e.g., Infinity*, 3 FCC Rcd at 933.[1] Broadcast indecency is a violation of federal law and its popularity in any particular community does not change that fact. But more importantly, the focus of our indecency standards must be on the risk to children in the audience.

Thus, it appears that on the above-referenced dates in November and December 1988, at the times stated, Station WIOD(AM) violated 18 U.S.C. § 1464 by airing indecent programming. As the broadcasts occurred during daytime hours, they are legally actionable. Accordingly, pursuant to Section 503(b) of the Communications Act, WIOD, Inc., is hereby advised of its apparent liability for a forfeiture of ten thousand dollars ($10,000). The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Act.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

WIOD Transcripts

JET BOY, JET GIRL

Jet boy, jet girl, gonna take you 'round the world.
Jet boy, I'm going to make them penetrate,
I'm going to make you be a girl,
Ooh, ooh, ooh, ooh, jet boy, jet girl.

Can you tell what's on my mind?
She with him, it drives me wild,
I like to hit him on the head, until he's dead.
The sight of blood is such a high
Ooh, ooh, ooh, ooh, he gives me head.

We made it on a ballroom blitz,
I took his arm and kissed his lips
He looked at me with such a smile, my face turned red.
We booked a room into the Ritz,
Ooh, ooh, ooh, ooh, he gives me head.

Jet boy, jet girl, gonna take you 'round the world,
Jet boy, I'm going to make them penetrate,
I'm going to make you be a girl,
Ooh, ooh, jet boy, jet girl.
And though I'm only just fifteen,
I like to kick, I like to scream,
And even if I have a kick or two in bed,
When I'm with him, it's just a dream,
Ooh, ooh, ooh, ooh, he gives me head.

Jet boy, jet girl, gonna take you 'round the world,
Jet boy, I'm going to make them penetrate,
I'm going to make you be a girl,
Ooh, ooh, jet boy, jet girl.

The other day, what a surprise,
I saw him with some other guys,
God, he was dressed up with a girl around his neck,
I could have cried before my eyes,
Ooh, ooh, ooh, ooh, he gave me head.

Jet boy, jet girl, gonna take you 'round the world,
Jet boy, I'm going to make them penetrate,
I'm going to make you be a girl,
Ooh, ooh, jet boy, jet girl.

And if or when I make it through,
Or if my brain is stuck on glue,

And when the world begins to forget all that I've said,
I'll still remember you,
Ooh, ooh, ooh, ooh, you gave me head.

Jet boy, jet girl, gonna take you 'round the world,
Jet boy, I'm going to make them penetrate,
I'm going to make you be a girl,
Ooh, ooh, ooh, ooh, jet boy, jet girl.

Jet boy, jet girl, gonna take you 'round the world,
Jet, I'm going to make them penetrate,
I'm going to make you be a girl,
Ooh, ooh, ooh, ooh, you gave me head.

Jet boy, jet girl, gonna take you 'round the world,
Jet boy, I'm going to make them penetrate,
I'm going to make you be a girl,
Ooh, ooh, ooh, ooh, jet boy, jet girl,
Jet boy, jet girl.

PENIS ENVY SONG

If I had a penis, I'd wear it outside
In cafes and car lots, with pomp and with pride
If I had a penis, I'd pamper it proper
I'd stay in the tub and use me as the stopper.

If I had a penis, I'd take it to parties
I'd stretch it and stroke it and shove it at smarties
I'd take it to pet shows and teach it to stay
I'd stuff it in turkeys on Thanksgiving day.

I'd rival my bodies in sports cars with stick shifts (?)
I'd shower my spire with girlies and gifts
I'd peek around corners, I'd aim at my toilet
I'd poke it at foreigners, and soap it and oil it.

If I had a penis, I'd run to my mother
Comb out the hair and compare it to brother
I'd lance her, I'd knight her, my hands would indulge
Pants would seem tighter and buckle and bulge.

A penis to plunder, a penis to push
'Cause one in the hand is worth one in the bush
A penis to love me, a penis to share
To pick up and play with when nobody's there.

I'd sit like a guy, I'd straddle the chair
I'd play with my fly, I'll beat it with care
I'd dip it in chocolate, I'd stick it in sockets
I'd stroll to the movies with hands deep in pockets
I'd stick it in vacuums on-on verandas
Gas-guzzling Volvos and poodles and pandas
And puddles and drainpipes and doggies and ditches and potholes and bottles and bitches
Zucchinis and zebras, tomatoes, tomatoes,
And pineapples, pumpkins, and gulches and grottos
And melons and marshmallows, gloves and gorillas
Slurpees and slippers, Chinooks (North American Indians)
and chinchillas.

A penis to plunder, a penis to push,
'Cause one in the hand is worth one in the bush,
A penis to love me, a penis to share,
To pick up and play with when nobody's there.

If I had a penis, I'd climb every mountain
I'd force it on females, I'd pee like a fountain,
If I had a penis, I'd still be a girl
But I'd make much more money and conquer the world.

THE CANDY (W)RAPPER SONG

It was another Payday. I was tired of being a Mr. Goodbar. So when I saw Miss Hershey standing behind the Powerhouse on the corner of Clark and Fifth Avenue, I whipped out my Whopper and whispered, "Hey, Sweet Tart. How'd you like to Crunch on my Big Hunk for a Million Dollar Bar?"

She immediately went down on my Tootsie Roll, and, you know, it was like pure Almond Joy. I couldn't help but grab her delicious Mounds, because it was easy to see that this little Twix had the Red Hots. It was all I could do to hold back a Snicker Crack Up, as my Butterfinger went up her tight little Kit-Kat.

She started to scream: "Oh, Henry. Oh, Henry." Soon she was fondling my Peter, Paul, and-Nuts. And I knew it wouldn't be long before I blew my Milk Duds clear to Mars and gave her a taste of the old Milky Way.

She asked if I was into M & M's. I said, "Hey, Chicklet. No Goofy Stuff." I said, "Look, you little Reese Piece, don't be a Zero. Be a Lifesaver. Why don't you just take my What You May Call It and slip it up your Bitter Honey."

Oooh, what a piece of Juicy Fruit she was, too. She screamed: "Oh, Cracker Jack. You're better than The Three Musketeers," as I ran my Ding Dong up her Rocky Road and into her Peanut Butter Cup.

I was giving it to her Good 'N' Plenty, when all of a sudden, my Star Burst. Yeah, as luck would have it, she started to grow a bit Chunky and complained of her Wrigley in her stomach. Sure enough, nine months later, out popped a Baby Ruth.

BUTCH BEER COMMERCIAL

Introducing Butch Beer! The first beer brewed for women by women. When you grab a Butch Beer, you're taking hold of the Billie Jean King of beers. Fire brewed from the gushing waters of French Lick, Indiana. With Butch Beer, you've got a beer that goes down easy. Taste

it, you'll know why it's our personal best. Go grab a Butch Beer, and get an image. Go grab a Butch Beer at every scrimmage. Go grab a Butch Beer, it goes down quicker. Go grab a Butch, as good as any liquor (lick her). Butch Beer. Let everyone know you're more than just a woman--you're a gal who can take it like a man. Snatch a twelve-pack off the shelf today. And crack open a Butch. Just ask any woman. On the (w)hole, it's as good as any liquor (lick her). Go grab a Butch Beer. The taste you'll savor. Go grab a Butch Beer--it's tuna flavor. Go grab a Butch Beer, it goes down quicker. Go grab a Butch. As good as any liquor (lick her). Butch Beer: Strong enough for a man, but who needs one? Go for the gusto with a strapping belt of Butch Beer. Sure, it costs a lot, but don't dicker (dick her) on the price. Butch Beer: come and find a butch flavor lickety split. Go grab a Butch Beer and get an image. Go grab a Butch Beer at every scrimmage. Go grab a Butch Beer. It goes down quicker. Go grab a butch. As good as any liquor (lick her). Butch Beer. Brewed by Ann Howser Bush, French Lick, Indiana, a Division of Tie One On Industries, Beaver Falls, Pennsylvania. The next time you're eating out, order a Butch.

WALK WITH AN ERECTION

(To the tune of "Walk Like an Egyptian")

He puts the Penthouse in his desk
He's got big muscles in his wrist
He holds his organ in his fist
He gives his pink dolphin(?) a mighty twist
He wears his trousers way too tight
Hoping that he'll score big tonight
He keeps his briefcase in his lap
Or else you know that his face gets slapped
All the girls in the office they say, "Hard-on, hard-on, beg my pardon" Walk with an erection

* * *

All the boys from Maine to Mexico
Are all obsessed with sex and blow
Like the cop who carries a big night stick
It's just an extension of his wick
He busts those hookers on the block
Unless they give service 'round the clock
Goes home to wife and kids so nice
Although he gets off on working vice

* * *

All the girls from B.U. they say, "Hard-on, hard-on, beg my pardon"
Walk with an erection
Walk with an erection

FOOTNOTE

[1] We note that our definition of indecency, including its "contemporary community standards for the broadcast medium" component, has been upheld in both *Pacifica, supra*, and *ACT, supra*.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
November 30, 1989

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

James de Castro, President
Evergreen Media Corporation of Chicago AM
Licensee, Radio Station WLUP(AM)
875 North Michigan Ave., Suite 3750
Chicago, IL 60611

Dear Mr. de Castro:

This letter constitutes a Notice of Apparent Liability for a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules.

On August 24, 1989, we asked for your comments concerning complaints received by the Commission alleging that portions of the "Steve and Garry Show" (transcripts of which are attached) broadcast by WLUP(AM), Chicago, IL, contained indecent material. The broadcasts at issue occurred between 2:30 and 4:30 p.m. on August 19, 1987, and at 5:10 p.m. on March 30, 1989.

Your October 10, 1989, response to our letter of inquiry concerning these broadcasts asserts that the material was not indecent. First, you argue that the context of the show--extemporaneous, open forum, frank, live and spontaneous, often humorous, with over half of the dialogue supplied by listeners subjected to WLUP's reasonable seven-second screenings--has never been pandering or titillating and often discusses important public issues. You urge that the merits of the live, spontaneous, "Steve and Garry Show" talkshow format, as conducted by WLUP, should weigh heavily against a Commission determination that the material was indecent or any Commission sanction against the station that would have a chilling effect. You maintain that the program is aimed at adults and would not be interesting to any but "the maturest" of minors; further, that there is no showing that unsupervised children listen to the program, or that any harm would result if they did. The degree of audience participation and the show's high ratings reflect, in your judgment, the contemporary community standards in the Chicago area. Therefore, you believe that, in context, the broadcasts were not patently offensive by contemporary community standards, locally for Chicago (as further illustrated by your submission of supportive listener letters) or for broadcasting generally.

In addition to arguing that the Commission's guidance in the area of indecency has been inadequate, and that its formulation of an indecency standard based on anything other than a factual finding of local standards is inappropriate, you raise questions about the Commission's application of precedent to the broadcasts here at issue. The March 30, 1989, broadcast, a "straightforward description" of a picture of Vanessa Williams in *Penthouse* magazine, occurred in the context of a discussion about pornography which led to a spoof of Ms. Williams' appearance on NBC Television's Bob Costas Show. You state that the broadcast comments were political and social commentary and gave a "simple, accurate description of a picture of oral-genital contact," in language that was explicit but not erotic or suggestive. They also included innuendo which you believe was not capable of only one, sexual, meaning, was not readily understandable by children, and was in each case no more than "a fleeting, isolated reference."

As to the August 19, 1987, broadcasts, you argue that neither contained explicit language. Rather, the "Kiddy Porn" song, sung by a call-in participant, contained only mild innuendo, and the called-in joke alluding to homosexual activity contained one double entendre which was not surrounded by explicit sexual references. You assert that children would not have readily understood a sexual meaning in either broadcast. Moreover, you assert that the "Kiddy Porn" song was perhaps offensive, not in language, but in subject: "[t]he complainant likely objected to this song because he/she believed that it was improper to address the troubling issue of child pornography in a humorous tune."

You maintain that the subjects of all these broadcasts--homosexual activity, child pornography, and oral-genital contact--are not taboo and that the language and context of raising these subjects in the cited broadcasts do not warrant an indecency determination. Further with respect to the broadcasts occurring in 1987, over two years ago, you raise the prospect of community and broadcast standards changing over time. Accordingly, you object to Commission enforcement actions that make it unclear which climate, that of August 1987 or that of a more recent time period, is relevant. Finally, you urge that since the licensee's decisions with respect to the cited broadcasts were reasonable, good faith determinations under the circumstances, no fine should be imposed. You also argue that no sanction should be imposed because these enforcement actions constitute a change in the Commission's regulatory course.

Section 1464 of Title 18 of the United States Code prohibits utterances of "any obscene, indecent or profane language by means of radio communication." Pursuant to Sections 312(a)(6) and 503(b)(1)(D) of the Communications Act, the Commission has statutory authority to take appropriate administrative action when licensees broadcast material in violation of 18 U.S.C. § 1464. The Commission has defined indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs"; such material may not be broadcast when there is a reasonable risk that children may be in the audience. In *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978), the Supreme Court upheld the Commission's authority to regulate indecent broadcasts and rejected the argument that the Commission's definition, essentially unchanged from the one used today, was unconstitutionally vague. Furthermore, the United States Court of Appeals for the District of Columbia Circuit has upheld the Commission's authority to restrict, using the same definition of indecency, the daytime broadcast of indecent material. *Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988). Moreover, we note that our definition of indecency, including its "contemporary community stan-

dards for the broadcast medium" component, has been upheld in both cases, and the Commission has maintained that it has expertise in ascertaining such standards for the broadcast medium. *See Infinity Broadcasting Corp. of Pa.*, 3 FCC Rcd 930, 933 (1987). We believe that there has been no significant change in the "contemporary community standards for the broadcast medium" between August 1987 and the present that should lead to a different result with respect to any of the broadcasts in question here. Nor does precedent require us to consider the popularity of allegedly indecent broadcasts in any given community in our efforts to protect children who may be in the listening audience. Finally, it is well established that protecting children from exposure to indecent material is a compelling governmental interest and courts have not questioned or expected proof on the issue of harm. *See Sable Communications of California, Inc. v. FCC*, 109 S.Ct. 2829, 2836 (1989); *Pacifica*, 438 U.S. at 749-50.

We believe that all the subject broadcasts fit squarely within our definition of indecency quoted above. The March 30, 1989, "straightforward description" of sexual activities that appeared in a magazine (the sale of which could very well have been restricted as to minors) was delivered by the talkshow host in explicit, graphic and vulgar language, at a time of day when unsupervised children were likely to have been in the listening audience. We do not accept your argument that the broadcast's asserted value as political and social commentary should shield it from normal Commission scrutiny or place it in a special category less vulnerable to Commission sanction. We also believe that the innuendo of that broadcast, as well as the innuendo and double entendre in the two others, was understandable and clearly capable of a specific sexual meaning, the import of which was inescapable. *See Infinity Broadcasting Corp. of Pa.*, 2 FCC Rcd 2705 (1987), *recon., Infinity Broadcasting Corp.*, 3 FCC Rcd 930 (1987), *aff'd in part and remanded in part sub nom. Action for Children's Television v. FCC, supra.*

Thus, it appears that on March 30, 1989, at 5:10 p.m., and on August 19, 1987, between 2:30 and 4:30 p.m., Station WLUP(AM) violated 18 U.S.C. § 1464 by airing indecent programming during daytime hours. Accordingly, pursuant to Section 503(b) of the Communications Act, Evergreen Media Corporation of Chicago AM is hereby advised of its apparent liability for a forfeiture of six thousand dollars ($6,000). The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Act, including the licensee's asserted good faith conduct.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3).

Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Transcripts, WLUP (AM), Chicago, IL

March 30, 1989, 5:10 p.m.

SD: Steve Dahl

GM: Gary Meier

BW: Bruce Wolfe

BW: He's (Bob Costas) trying to defend this Vanessa Williams. I mean she's a, the most embarassing pictures that you ever saw in your life in Penthouse. I don't know and he's talking about how she actually had more talent than your typical Miss America. I'll say.

SD: She was licking that other woman's vagina. I want to tell you pal.

GM: Isn't this great. We can all break into Jack Brickhouse at any moment.

BW: They chorus. But I mean, he's just offending her (unintelligible).

SD: Went down on that other woman and oh God, you had your tongue in her vagina. It was fabulous. A lot of your Miss Americas can. I don't picture Phyliss George being able to do it like that.

GM: More on later with Vanessa Williams. (Laughter)

BW: Show all these pictures of her right? They're getting increasingly suggestive. They show in that break.

SD: He had to put his leg up on the ottoman because he had a stiff-oh. God, I'm as hard as a rock right now Vanessa. You're so honest Bob.

GM: On the big chair.

BW: Oh, he's always dropping these references.

SD: He looks like he could (unintelligible). That chair's way too big.

August 19, 1987, 2:30 to 4:30 p.m.

C: Caller

SD: Steve Dahl

GM: Gary Meier

C: I want you guys to listen to my Cliff song and see if I'm on the right track, a little bit because I'm stumbling along with some of the lyrics, or, I have a.

SD: Why don't you pick what you think is your best.

C: OK, let's do this then because I want, I want to know if I'm on the right way. OK? You got to imagine Cliff singing this' cause it's not that funny otherwise but, this parody to September Morn and we're going to call it Kiddie Porn. Here we go. (music) Welcome to my camp, you're a grown up little man, let me rub out that cramp, my, you've got a lovely hand, look at who you are and where you want to go, drop your drawers and strike a pose, my tripod's all aglow, it's Kiddie Porn. Do you remember when we filmed that hot summer day, you were nude and you discovered I was gay. Yes, I know but let's go roll out in the hay. (laughter in the background during song)

SD: That's pretty good.

GM: I think you should sing that. I think Cliff commissioned.

C: I was there.

SD: Pretty funny with you singing it.

* * * * * * * *

C: I have a joke for you guys and think you can say it on the air. It's not real bad but do you know what the number one line in a gay bar is?

SD: What?

C: May I push your stool in for you?

SD: (laughs) Don't you think those guys have enough to deal with? We got AIDS and all that and then we're all naming gerbil jokes and stuff. I don't know.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
April 25, 1990

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Independent Group Limited Partnership
Licensee, Radio Station WWWE(AM)
Reserve Square
1250 Superior Avenue
Cleveland, OH 44114

Dear Licensee:

This letter constitutes a Notice of Apparent Liability for a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules.

On October 26, 1989, we asked for your comments concerning a complaint received by the Commission alleging that portions of the "Gary Dee Show" (transcripts of which are attached) broadcast by WWWE(AM), Cleveland, OH, contained indecent material. The broadcasts at issue occurred from 2 p.m. to 6 p.m. on June 15, June 21, June 26, and July 10, 1989.

Your December 4, 1989, response to our letter of inquiry concerning these broadcasts argues that the broadcasts are not actionable because they were not aired when children were listening, and further, that the broadcasts in question were not indecent by definition. You claim that surveys and other research data demonstrate that the Gary Dee Show in general was not patently offensive in the Cleveland area. You argue that the Commission's use of a national rather than a local standard for determining patent offensiveness is inappropriate and that its articulated standards regarding indecency are unconstitutionally vague. Finally, you describe your good faith efforts to exercise an indecency policy, including a seven-second delay mechanism for screening call-in talk show comments. You ask that we take into consideration the difficulty of policing a lively and controversial talk-show format, which requires split-second decisions on complicated First Amendment issues.

After careful consideration of all your arguments, we are not persuaded that the subject broadcasts fall outside our definition of indecency or our authority to sanction a licensee for airing such material at the times stated. Section 1464 of Title 18 of the United States Code prohibits utterances of "any obscene, indecent or profane language by means of radio communication." Pursuant to Sections 312(a)(6) and 503(b)(1)(D) of the Communications Act, the Commission has statutory authority to take appropriate administrative action when licensees broadcast material in violation of 18 U.S.C. § 1464. The Commission has defined indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." In *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978), the Supreme Court upheld the Commission's authority to regulate indecent broadcasts and rejected the argument that the Commission's definition, essentially unchanged from the one used today, was unconstitutionally vague. The United States Court of Appeals for the District of Columbia Circuit has since upheld the Commission's authority to restrict the broadcast of indecent material when there is a reasonable risk that children may be in the audience, *Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988) ("*ACT*"), in a ruling encompassing the same definition of indecency including its "contemporary community standards for the broadcast medium" component.

We believe that the subject broadcasts all fit squarely within the definition of indecency quoted above. Thus, it appears that on the above-referenced dates in June and July 1989, at the times stated, Station WWWE(AM) violated 18 U.S.C. § 1464 by airing indecent programming at times when there was a reasonable risk of children in the audience. Accordingly, pursuant to Section 503(b) of the Communications Act, Independent Group Limited Partnership is hereby advised of its apparent liability for a forfeiture of eight thousand dollars ($8,000). The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Act, including the licensee's asserted good faith conduct.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3).

Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Radio Station WWWE(AM), Cleveland, Ohio

The Gary Dee Show

2:00-6:00 p.m.

June 15, 1989

Gary Dee: "My first question: Do you remember when you had your first erection, Sir?"

Caller: "Uh, yes."

Gary D: "Um-hm. Were you looking at a man or a woman or thinking about a man or a woman?"

Caller: "Uhmm, I, really neither one."

Gary D: "You were then self-manipulative."

Caller: "Well."

June 21, 1989

Caller: "Gary, I have a comment to make and then I want to tell you what my dream and my goal was for me in life."

Gary D: "Excellent."

Caller: "My comment is Lou told me that Chris James gives fellatio okay. Now my dream, ya still there, Gary?"

Gary D: "Yeah."

Caller: "Now, my dream is to get in Chris James' pants."

Gary D: "Well, why don't you be a man and go down there and say that to her face. You know, you are just like a little kid masturbating in public. You've got no class, you've got no taste."

June 26, 1989

Caller: "That is unbelievable. I tell you. Hey, listen. I want to give you a quick comment about, ah, you were talking about . . . "

Gary D: "But you know, when God in his infinite wisdom, you know, but to me the missionary position is sort of funny. It's sort of weird. And it would be a lot easier if we did have our organs, our sexual organs, on our elbow and you could, you know . . . "

Caller: "It would make normal things a lot more fun, like driving and you know . . . shopping."

Gary D: "While you're waiting in line at the check out stand, at your K-Mart."

* * *

Gary D: "Good afternoon 3WE."

Caller: "Yeah, Gary, I was born with a defect. My penis was on my head."

Gary D: "Oh, my goodness. A birth defect."

Caller: "Yeah, whenever I get excited . . . "

Gary D: "These, ah, ah . . . What happens is . . . (clears throat) these chemicals in the walleye, in the sheephead ... "

Caller: "Yeah, but listen. What happens is whenever I get excited is my hat would fly off."

* * *

Gary D: "Good afternoon 3WE."

Caller: "Gary Dee, I've got a D-Team report."

Gary D: "A D-Team report, ladies and gentlemen."

Caller: "This is off the wire from AP and UPI out of Milwaukee."

Gary D: "Okay."

Caller: "A Milwaukee area man who lost part of his penis in a lawn mower accident Saturday, was in satisfactory condition Monday, after the organ was attached to his arm until it can be reattached, a hospital spokesman said."

Gary D: "Is that right? I wonder why they put it on his arm?"

Caller: "I figure this way it's easier if he has to go to the bathroom, he just rolls down the window while he's driving."

Gary D: "Right, or you could put it on your nose and you just blow your nose."

* * *

Gary D: "Good afternoon, 3WE."

Caller: "Hey, Gary, how ya doin'?"

Gary D: "Just fine."

Caller: "Okay, a guy with a penis growing from his nose. What's his biggest concern?"

Gary D: "I don't know."

Caller: "Sneezing during intercourse."

July 10, 1989

Gary D: (during introduction to song) "Well, honey. I enjoyed it. I hope you didn't have to fake it. (singing along with record) Oh, jealous me and careless you, the odds were just too great. I couldn't take those lonely nights (change lyrics) . . . so I had to masturbate."

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Communications Satellite Corporation — Transmittal No. 868

Tariff F.C.C. No. 103

ORDER

Adopted: June 13, 1991; Released: June 13, 1991

By the Chief, Common Carrier Bureau:

1. On June 5, 1991, Capital Cities/ABC, Inc., CBS Inc., and National Broadcasting Company, Inc. (petitioners) filed a motion for an extension of time of two weeks, from June 7, 1991, to June 21, 1991, to file a petition to reject or suspend and investigate by the above-captioned tariff transmittal filed by Communications Satellite Corporation (Comsat).[1]

2. Petitioners state that Comsat's tariff filing introduces non-preemptible full-period Ku-band transponder service for high-power video and very small aperture terminal (VSAT) service applications on a satellite which is not yet operational. Motion at 1-2. They also state that they are major users of Comsat's international television transmission services and potentially are major users of the new full-period television services. *Id.* at 2. Petitioners request additional time to analyze Comsat's proposed rate levels for the service. According to petitioners, counsel for Comsat has been contacted and has agreed not to oppose the two-week extension. *Id.* at 2.

3. The Common Carrier Bureau has reviewed petitioners' motion and concluded that the public interest would be served by its grant. We also conclude that all interested parties should be afforded a similar extension of time. Therefore, all petitions pertaining to Transmittal 868 must be filed not later than June 21, 1991. Comsat's reply must be filed not later than June 28, 1991.

4. Accordingly, IT IS ORDERED that the motion for extension of time filed by Capital Cities/ABC, CBS Inc., and National Broadcasting Company, Inc., with regard to the above-captioned transmittal IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] Communications Satellite Corporation, Tariff F.C.C. No. 103, Transmittal No. 868, filed May 23, 1991.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: June 14, 1991

INDEPENDENT TELEPHONE COMPANIES FILE WAIVER REQUESTS TO OFFER OPERATOR SERVICES

Pleading Cycle Established

Cascade Utilities, Inc., Sierra Telephone Company, Inc., and the Volcano Telephone Company (Petitioners),[1] have filed petitions for waiver of Part 69 of the Commission's Rules to permit Petitioners to tariff operator services under the Local Switching rate element and to assign costs associated with operator services directly to the access category.

Petitioners assert that grant of the petitions will ensure that they recover costs incurred in providing vital operator services to interexchange carriers and to their subscribers. Petitioners maintain that the requested waivers are consistent with recent Part 69 waivers for the provision of operator services, comports with the purposes and policies underlying the access charge rules, and are in the public interest.

Interested parties wishing to comment on the petitions for waiver filed by Cascade Utilities, Inc., Sierra Telephone Company, Inc., and the Volcano Telephone Company should do so no later than June 28, 1991. Reply comments concerning the waiver may be filed no later than July 5, 1991.

An original and four copies of all comments and replies must be filed with the Secretary of the Commission in accordance with Section 1.51(c) of the Commission's Rules. Parties must also furnish one copy of their comments and replies to the Downtown Copy Center (DCC), the Commission's duplicating contractor, at its office in Room 246, 1919 M Street, N.W., Washington, D.C. 20554, and one copy to the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

Copies of the waiver petitions, along with other related documents, may be obtained from DCC. The documents are also available for public inspection and copying in Room 518, 1919 M Street, N.W. An original and four copies of all comments and replies must be filed, in accordance with Section 1.51(c) of the Commission's Rules.

For further information, contact Wanda M. Harris, Tariff Division, Common Carrier Bureau at (202) 632-6917.

FEDERAL COMMUNICATIONS COMMISSION

FOOTNOTE

[1] Cascade Utilities, Inc., Petition for Waiver, filed Apr. 19, 1991; Sierra Telephone Company, Inc., Petition for Waiver, filed May 8, 1991; Volcano Telephone Company, Petition for Waiver, filed May 24, 1991.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-95

In the Matter of

Communications Satellite Corporation

ORDER

Adopted: June 14, 1991; Released: June 14, 1991

By the Chief, Common Carrier Bureau:

1. AT&T Communications (AT&T) has requested that the Commission clarify or reconsider its *Comsat Flow-Through Order*,[1] to the extent that Order construes the *AT&TPrice Cap Order*.[2] In the *Comsat Flow-Through Order* the Commission required AT&T to treat refunds of past excessive charges paid to Communications Satellite Corporation (Comsat) as exogenous cost decreases for price cap purposes. AT&T challenges the prospective application of any interpretation of the *Price Cap Order* that would require exogenous treatment of all refunds, but does not, however, challenge the requirement that it treat refunds received from Comsat as exogenous costs in this particular instance.[3]

2. The Commission has not yet considered AT&T's petition. As AT&T does not challenge the classification of the refunds received in the instant proceeding, however, the refund need not await Commission action on that petition.[4] In these circumstances, no useful purpose would be served by further deferring the disbursement of funds to AT&T.

3. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 201(b), and 205(a) of the Communications Act, 47 U.S.C. §§ 4(i), 201(b), 205(a), that Communications Satellite Corporation SHALL DISBURSE to American Telephone and Telegraph Company the refund amount listed in Appendix A to the *April 18 Order* within three business days of the release of this Order, supplemented by interest accrued to no more than 72 hours prior to disbursement.

4. IT IS FURTHER ORDERED, consistent with the Commission's instructions in the *Comsat Flow - Through Order* that AT&T shall treat these refunds as an exogenous reduction in its costs, and allocate the entire refund amounts received from Comsat to the several service baskets established by price cap regulation. The aggregate refund shall be divided between the price cap indexes for the affected service baskets according to the manner in which AT&T's international services generated revenues during the period covered by the refunds. AT&T should report its new Price Cap Index values, revised Service Bands, and the calculations supporting them to the Bureau by letter or, if necessary, by a tariff filing.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] Communications Satellite Corporation, CC Docket No. 88-95, Memorandum Opinion and Order (Flow-Through), 4 FCC Rcd 8514, 8516 (para. 19)(1989) (*Comsat Flow-Through Order*).

[2] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Report and Order and Second Further Notice of Proposed Rule Making, 4 FCC Rcd 2873 (1989), Erratum, 4 FCC Rcd 3379 (together, *AT&T Price Cap Order*); Memorandum Opinion and Order on Reconsideration, CC Docket No. 87-313, 6 FCC Rcd 665 (1991); *appeal docketed sub nom.* AT&T v. FCC, D.C.Cir. Case No. 91-1178, Apr. 16, 1991.

[3] *See* AT&T Petition for Clarification or, in the Alternative, Reconsideration, filed Jan. 10, 1990 (AT&T Petition). No subsequent pleadings addressed to the AT&T petition were received.

[4] *See* Communications Satellite Corporation, CC Docket No. 88-95, DA 91-487, (Com. Car. Bur. released Apr. 18, 1991) at n. 3 (ordering dispersal of overearnings for all Comsat customers except AT&T and noting that the Bureau would examine AT&T's disbursement status in a subsequent Order); Erratum, DA 91-526, Apr. 24, 1991 (together, *April 18 Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Ameritech Operating Companies — Transmittal No. 518

Revisions to Tariff F.C.C. No. 2

ORDER

Adopted: June 17, 1991; Released: June 18, 1991

By the Deputy Chief (Policy), Common Carrier Bureau:

1. On February 19, 1991, the Ameritech Operating Companies (Ameritech) filed Transmittal No. 518 to offer a 64.0 Kbps speed option to Ameritech's OPTINET Base Rate Service. This option will provide a channel for digital transmission at 64.0 Kbps between two customer-designated premises or between a customer-designated premises and a telephone company serving wire center. OPTINET 64 Kbps will be used by customers who require high speed communications to connect host computers, link personal computers to CAD/CAM workstations, and connect remote business sites to private corporate networks. Description and Justification. MCI Telecommunications Corporation (MCI) filed a petition to suspend and investigate Transmittal 518 on March 6, 1991. Ameritech filed its reply on March 15, 1991. Transmittal 518 is scheduled to become effective on June 19, 1991. For the reasons discussed below, we suspend this transmittal for one day, impose an accounting order, and initiate an investigation of the rates for 64 Kbps service.

2. In its petition, MCI contends that the rates in Transmittal 518 are significantly above costs and raise serious concerns about local exchange carrier (LEC) price cap regulation. MCI Petition at 1. MCI claims that because Ameritech estimates demand for 64 Kbps will increase dramatically,[1] estimated net revenue should also increase exponentially. Specifically, in the first year the net revenue effect, revenues minus costs, will be 200 percent less than costs, but by the third year, the net revenue test shows net revenues exceed costs by approximately 90 percent. *Id.* According to MCI, the service will produce an average revenue increase of 22 percent over the three-year period. MCI argues that the Commission did not contemplate such excessive net revenues when it instituted price cap regulation. *Id.* at 2-3.

3. MCI also contends that the rates for 64 Kbps service have no relationship to alleged costs and that they are merely market based. MCI indicates that an OPTINET 64 Kbps local distribution channel has a rate significantly higher than the price for OPTINET 56 Kbps service even though Ameritech's cost support information indicates similar recurring and nonrecurring costs. MCI claims that Ameritech determined rates for 64 Kbps by extrapolating rates for other OPTINET services. MCI cites Ameritech's 800 Customer Identification offering, Transmittal No. 483, that the Bureau rejected for failure to establish a relationship between price and costs.[2] MCI repeats the argument made in its petition for reconsideration of the *LEC Price Cap Order*[3] that the net revenue test places insufficient limits on the upper level of LEC prices for new services. *Id.* at 2-4.

4. In its reply, Ameritech argues that MCI's petition should be denied because it constitutes an improper challenge to the Price Cap rules for new services adopted by the Commission. Ameritech Reply at 1. According to Ameritech, MCI does not dispute that Ameritech fully complied with those rules as originally adopted. *Id.* at 2. Ameritech further argues it provided clear evidence that OPTINET 64 Kbps service passes the net revenue test. *Id.* at 3-4.

5. Ameritech also rejects MCI's argument that its rates are not cost based. According to Ameritech, MCI's real complaint is not a failure to meet Commission requirements for the relationship between costs and rates, but the fact that MCI dislikes the relationship between costs and rates that the carrier established. *Id.* at 4. Transmittal 518, says Ameritech, clearly demonstrates that its rates are designed to recover the costs for the service. *Id.* Ameritech responds that MCI's reference to Ameritech Transmittal 483 is irrelevant because that transmittal was filed and evaluated under rate of return rules. *Id.* at 4 n. 7. Finally, Ameritech dismisses MCI's claim that Ameritech failed to provide specific cost data. *Id.* at 4. According to Ameritech, the cost data for 64 Kbps service is the same as for existing OPTINET Base Rate services and these costs have been previously accepted as sufficient by the Commission. *Id.*

6. The Common Carrier Bureau concludes, based on our review of Transmittal 518, the associated pleadings, and the additional cost support filed to determine compliance with the *LEC Price Cap Reconsideration Order*, that the possibility exists that Transmittal 518 contains unreasonably high rates for 64 Kbps service in violation of Section 201(b) of the Communications Act, 47 U.S.C. § 201(b). Because customers may be subject to excessive rates as a result of this new service, we will suspend the offering for one day, impose an accounting order, and initiate an investigation into the reasonableness of these rates.[4] We will establish a docket and designate the issues to be examined in this investigation in a future Order.

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[1] Ameritech estimates demand for 64 Kbps will grow an average of 32.2 percent annually through 1993. Ameritech also estimates the service will generate a net revenue of $100,685 over three years.

[2] *Citing* Ameritech Operating Companies, Revisions to Tariff F.C.C. No. 2, Transmittal No. 483, 6 FCC Rcd 694, 695 (para. 9) (1991).

[3] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786 (1990) (*LEC Price Cap Order*), *reconsideration*, FCC 91-115, released Apr. 17, 1991 (*LEC Price Cap Reconsideration Order*).

[4] The Common Carrier Bureau has determined that a longer suspension would not be in the public interest. Allowing this transmittal to become effective will immediately provide customers with a service which offers greater information carrying

7. Accordingly, IT IS ORDERED that, pursuant to Sections 204(a) and 403 of the Communications Act of 1934, 47 U.S.C. §§ 204(a), 403, an investigation IS INSTITUTED into the lawfulness of the tariff revisions filed by the Ameritech Operating Companies in Tariff F.C.C. No. 2, Transmittal No. 518.

8. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the instant tariff revisions filed by Ameritech Operating Companies ARE SUSPENDED for one day.

9. IT IS FURTHER ORDERED that Ameritech Operating Companies SHALL FILE a supplement reflecting this suspension no later than five business days from the release of this Order. Special Permission No. 91-489 is assigned for this purpose.

10. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, Ameritech Operating Companies shall keep accurate account of all amounts received pursuant to the rates which are the subject of this investigation.

11. IT IS FURTHER ORDERED that the petition to suspend and investigate Ameritech Operating Companies Transmittal No. 518 filed by MCI Telecommunications Corporation IS GRANTED to the extent indicated herein and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carl D. Lawson
Deputy Chief (Policy),
Common Carrier Bureau

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capacity than is now available from Ameritech. Therefore, the Bureau does not wish to delay Ameritech's implementation of this new service.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 91-115

In the Matter of

Policies and Rules Concerning
Local Exchange Carrier Validation
and Billing Information for
Joint Use Calling Cards

ORDER

Adopted: June 18, 1991; Released: June 18, 1991

By the Chief, Common Carrier Bureau:

1. On June 11, 1991, MCI Telecommunications Corporation (MCI) filed a motion for an extension of time of 30 days, from June 24, 1991, to July 24, 1991, to file comments in the above-captioned proceeding and a corresponding 30-day extension until August 14, 1991 to file reply comments. MCI requests additional time to interact with key company personnel to develop comments on issues concerning joint use calling card billing and validation. The motion is unopposed.

2. MCI contends that these issues are extremely complex and their resolution will have a significant impact on carriers' calling card operations. Motion at 1. MCI also argues that this proceeding may be affected by the Commission's decision in its pending proceeding concerning access to operator services.[1] *Id.*

3. The Common Carrier Bureau has reviewed MCI's motion and we conclude that the public interest would be served by its grant. We also conclude that all interested parties should be afforded a similar extension of time. Therefore, all comments pertaining to CC Docket No. 91-115 must be filed not later than August 15, 1991. Replies must be filed not later than September 16, 1991.

4. Accordingly, IT IS ORDERED that the motion for extension of time filed by the MCI Telecommuincations Corporation with regard to the above-captioned proceeding IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] Policy and Rules Concerning Operator Service Access and Pay Telephone Compensation; Notice of Proposed Rule Making, CC Docket No. 91-35, 6 FCC Rcd 1448 (1991).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-148

In the Matter of

Amendment of Section 73.202(b), RM-7711
Table of Allotments,
FM Broadcast Stations.
(Edisto Beach, South Carolina)

ORDER WITHDRAWING NOTICE OF PROPOSED RULE MAKING
(Proceeding Terminated)

Adopted: June 19, 1991; Released: June 20, 1991

By the Chief, Allocations Branch:

1. On May 22, 1991, the Commission adopted the *Notice of Proposed Rule Making*, 6 FCC Rcd _____ (1991), 56 FR 26368 (June 7, 1991), proposing the allotment of Channel 229A to Edisto Beach, South Carolina, as the community's first local FM service, at the request of Toni T. Rinehart ("petitioner"). On April 17, 1991, the Commission adopted the *Notice of Proposed Rule Making* in MM Docket No. 91-127, 6 FCC Rcd 2243 (1991), proposing, *inter alia*, the substitution of Channel 249A for Channel 287A at Walterboro, South Carolina, to accommodate proposed channel changes at Moncks Corner, South Carolina, and Richmond Hill, Georgia.

2. In proposing the Walterboro substitution, the staff inadvertently failed to include the alternative proposal of substituting Channel 229A for Channel 287A at Walterboro, as proposed by the Moncks Corner proponent and agreed to by the permittee of the Walterboro station. Channel 229A cannot be allotted to both Edisto Beach and Walterboro. The communities are located only 58 kilometers apart, while the Commission's Rules stipulate a minimum distance separation of 115 kilometers for co-channel Class A allotments. The Edisto Beach proposal should have been treated as a counterproposal in the Moncks Corner proceeding.[1] Therefore, we are withdrawing the *Notice* in this proceeding and issuing a Public Notice announcing the acceptance of the Edisto Beach petition as a counterproposal in MM Docket No. 91-127.

3. Accordingly, IT IS ORDERED, That the *Notice of Proposed Rule Making* in MM Docket No. 91-148 IS HEREBY WITHDRAWN.

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The Edisto Beach proposal was filed on April 16, 1991. The deadline for filing counterprpoosals in MM Docket No. 91-127 expired on June 17, 1991. Therefore, the Edisto Beach proposal constitutes a timely filed counterproposal in that docket.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: June 13, 1991

FILING REQUIREMENTS FOR PIONEER'S PREFERENCE

GEN Docket No. 90-217

In the *Report and Order* in GEN Docket No. 90-217, the Commission adopted rules that provide preferential treatment in its licensing processes for parties requesting spectrum allocation rule changes associated with the development of new communications services and technologies.[1] This public notice is issued to address inquiries received by Commission staff regarding application of the *Report and Order* to matters now pending before the Commission.

For Commission proceedings initiated before April 9, 1991 (the date of adoption of the *Report and Order*), a preference applicant will not be required to submit a petition for rule making provided that it has previously submitted a petition for rule making or experimental license application or submits an experimental license application (or demonstration of technical feasibility) before the July 30, 1991 effective date of the *Report and Order*.[2] As the Commission stated in the *Report and Order*: "In situations where a petition for rule making has been filed or a notice of inquiry adopted, a request for a pioneer's preference may be filed by entities that either filed a petition for rule making proposing a new service or innovative technology or who filed some other request with the Commission (*e.g.*, an experimental license application) proposing a new service or innovative technology. This approach will avoid treating unfairly entities who did not file separate petitions for rule making at a time when doing so did not provide any licensing benefits, but who had come forward with a new service or innovative technology proposal."[3]

A preference request may be filed at any time subsequent to release of the *Report and Order*. While the *Report and Order* specifies an effective date of July 30, 1991, preference requests filed after release of the *Report and Order* on May 13, 1991, will be accepted. However, such requests will not receive a higher ranking or other special consideration in relation to other preference requests also submitted during this initial filing period.

The Commission periodically will issue public notices soliciting comment on those requests for a pioneer's preference filed in proceedings initiated prior to the adoption of the *Report and Order*. An applicant submitting such a request should reference on the first page the rule making or docket number to which the request relates. Each such request will be assigned a file number and will be available for public inspection at the Commission's Dockets Reference Center, Room 239, 1919 M Street, NW, Washington, D.C. 20554, or through purchase from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW, Washington, D.C. 20036.

This action is taken by the Chief Engineer pursuant to authority found in sections 0.31 and 0.241 of the Commission's Rules. For further information, contact Rodney Small, (202) 6538116.

FEDERAL COMMUNICATIONS COMMISSION

[1] *See Report and Order*, GEN Docket No. 90-217, released May 13, 1991, FCC 91-112.

[2] A proceeding will be considered to have been initiated before the adoption of the *Report and Order* if the Commission adopted a notice of inquiry before this date (as was the case, for example, in GEN Docket No. 90-314, dealing with new personal communications services, and GEN Docket No. 90-357, dealing with new digital audio radio services) or if a petition for rule making was filed and accepted before this date (as was the case, for example, in RM No. 7334, dealing with a petition filed by Orbital Communications Corporation to establish a low-Earth orbit satellite service).

[3] *Report and Order*, at para. 70.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 90-260

In the Matter of

Amendment of Rules to Eliminate
Grandfathering Provisions
Applicable to Licensees on
MAS Frequencies

REPORT AND ORDER

Adopted: June 11, 1991; Released: June 27, 1991

By the Commission:

I. INTRODUCTION

1. A multiple address system (MAS) is a point-to-multipoint communications system licensed under Part 94 of the Commission's Rules, the Private Operational-Fixed Microwave Service. MAS stations are designed for one-way or two-way communications between a specific point and multiple fixed surrounding points. 47 C.F.R. § 94.3. On May 7, 1990, we adopted a *Notice of Proposed Rule Making* to update and clarify several "grandfathering" provisions governing the use of spectrum allocated for MAS.[1] These grandfathering provisions have allowed services and operations on the 900 MHz MAS frequencies incompatible with those multiple address systems currently licensed. By this *Report and Order*, we are eliminating or modifying these grandfathering provisions, thus promoting more efficient use of spectrum assigned to MAS operations. This decision to maximize use of existing MAS assignments recognizes the growing demand for MAS frequencies and the continuing development of spectrally efficient technology.

II. BACKGROUND

2. MAS stations provide a variety of different services to a diversity of eligible users. Utility cooperatives and the petroleum industry use MAS frequencies to monitor their electric and petroleum lines for faults or blockages through supervisory control and data acquisition (SCADA) systems. Security firms use MAS frequencies for alarm signalling from their customers' locations. Utility companies engage in remote meter reading of consumers' power usage. Digital radio networks provide businesses with point-of-sale credit card verifications. The banking industry uses MAS for electronic fund transfers from automated teller machines.[2] As the types of MAS services have increased, demand for these frequencies has similarly increased since the mid-1980s. More state-of-the-art MAS equipment is becoming available to meet narrowband technical requirements.

3. In 1975, we established the Private Operational-Fixed Service (OFS) as a discrete radio service under the then new Part 94 of our Rules. [3] Channelization plans addressed frequency pairing and channel spacing for operations in the 952-960 MHz band. Available channel bandwidths included 50 kHz, 100 kHz, and 200 kHz. In the *1975 Report and Order*, the Commission adopted the first grandfathering provision at issue. Systems authorized prior to August 1, 1975, did not have to comply with these channelization or bandwidth standards.[4]

4. In the early 1980s, we reallocated channels in the 928-929 MHz and 952-953 MHz bands specifically for MAS operations.[5] The *1981 Report and Order* established a standard MAS channel bandwidth of 25 kHz. Applicants could request two adjacent channels for a maximum of 50 kHz upon proper justification of need.[6] The *1982 Report and Order* also retained the 25 kHz bandwidth standard.[7] Recognizing that licensees needed time to amortize the cost of their equipment before meeting these new standards, we created a second grandfathering provision. Systems authorized on the 900 MHz MAS frequencies as of January 1, 1981, would not be subject to the channelization and 25 kHz bandwidth requirements until after January 1, 1991.[8]

5. In 1988, we completed our comprehensive review of 900 MHz MAS operations.[9] We repeated our policy that MAS frequencies are intended to satisfy point-to-multipoint needs. To meet increasing demand for point-to-multipoint channels, we reduced the standard bandwidth for MAS channels from 25 kHz to 12.5 kHz. The *1988 Report and Order* created the third grandfathering provision in which existing 25 kHz MAS stations licensed as of May 11, 1988, were grandfathered indefinitely.[10] On reconsideration, we affirmed our initial decision, reiterating our goals to assure efficient spectrum use, facilitate licensing flexibility, and accommodate new technologies as well as unique systems.[11]

6. The *Notice* proposed to amend Section 94.65(a) of the Rules, 47 C.F.R. § 94.65(a), to modify and clarify these grandfathering provisions. Depending on the date of licensing, four discrete groups of licensees would be affected by our proposals to (1) require pre-August 1, 1975 point-to-point licensees to vacate MAS frequencies and point-to-multipoint licensees to comply with our current channelization requirements within five years; (2) retain the existing grandfathering provision for the August 1, 1975 to January 1, 1981 licensees (as these licensees should be in compliance with current channelization requirements, given the established January 1, 1991 deadline); (3) continue to grandfather pre-May 11, 1988 licensees using 25 kHz channels; and (4) adopt a new grandfathering provision for post-January 1, 1981 licensees using up to a maximum bandwidth of 50 kHz.

III. DISCUSSION

7. We received comments from the American Petroleum Institute (API), the Central Station Alarm Association (CSAA), and the Utilities Telecommunications Council (UTC). UTC also filed reply comments. All three commenters supported our proposal to modify and clarify the 900 MHz MAS grandfathering provisions.

Stations Licensed Before August 1, 1975

8. *Proposal.* Currently, Section 94.65(a)(1) excuses pre-August 1, 1975, licensees from compliance with our channelization standards applicable to the 928-929 and 952-953 MHz MAS bands. 47 C.F.R. § 94.65(a)(1). As a result, several of these licensees are permitted to engage in point-to-point operations, contrary to the intended use of these bands for MAS point-to-multipoint operations. Some licensees operate with bandwidths up to 200 kHz and with channel pairings different from our existing rules. *See Notice*, 5 FCC Rcd 3079, 3080. To increase spectrum efficiency, we proposed to require licensees of systems licensed before August 1, 1975, that conduct OFS operations on frequencies now assigned to MAS to move their stations to other frequency bands or modify their operations to meet the current regulations outlined in Section 94.65(a)(1). First, all point-to-point systems using the 952-953 MHz MAS frequencies would be required to change to designated point-to-point frequencies within five years from the date of adoption of the final order in this proceeding.[12] Second, those point-to-multipoint licensees on the 952-953 MHz frequencies would be required to comply with the current channelization plan and the 12.5 kHz bandwidth provisions within five years from the release of the final order in this proceeding. *Id.* at 3080.

9. *Comments/Decision.* Comments support both these proposals for the pre-August 1, 1975, licensees. CSAA encourages the termination of the grandfathered status of the older, less spectrally efficient, wideband systems in favor of expanding availability for other MAS systems.[13] UTC voices similar approval of requiring point-to-multipoint systems' compliance with Section 94.65 and moving point-to-point systems off the MAS frequencies.[14] Also in support, API cites an example of spectral inefficiency where prospective applicants could not establish MAS systems because of the existence of an older 100 kHz licensee.[15] Noting the competition to obtain point-to-multipoint frequencies, both API and UTC see the five-year transition period as reasonable.[16]

10. Given our goal of efficient spectrum management in a changing technological marketplace, we will adopt both these proposals for this group of pre-August 1, 1975 MAS licensees. As for the point-to-point systems, they are using valuable spectrum specifically designated for point-to-multipoint use. Our proposal encourages the compatible use of the 952-953 MHz frequencies for multipoint operations. We have estimated that 21 grandfathered licensees will have to move to other channels.[17] The increase in the availability of new MAS channels is significant as one 100 kHz point-to-point channel could create eight 12.5 kHz MAS stations.[18] Similarly, many older, pre-1975 point-to-multipoint systems are consuming large bandwidths of spectrum and are operating on outdated channeling plans. Our channeling plan provides for structured use of MAS frequencies. Requiring adherence to the 12.5 kHz MAS standard will make frequencies available for new licensees. Licensees still may make showings to justify requests for channels with bandwidths up to 50 kHz under Section 94.65(a)(1).

11. The *Notice* proposed that "all point-to-point systems using the 952-953 MHz MAS frequencies be required to change" to other designated frequencies. 5 FCC Rcd at 3080. In some cases, several point-to-point licensees may have obtained waivers from the requirements of Section 94.65(a)(1), and these waivers may have been grandfathered.[19] Subsequently, some of these point-to-point licensees may have obtained additional licenses for new stations to expand their systems. These licensees must follow the rules as adopted in this proceedings. To continue to grant waivers to these licensees would defeat our goals of obtaining compatible service and efficient channelization from these older systems. For all these licensees, the five-year transition time period should be sufficient to allow the depreciation of most, if not all, equipment costs. Importantly, such compliance brings these older technological systems into the modern age and enhances spectral efficiency.

MAS Stations Licensed Between August 1, 1975, and January 1, 1981

12. *Proposal.* The second grandfathering provision permitted MAS stations licensed on 900 MHz frequencies between August 1, 1975, and January 1, 1981, inclusive, to operate as authorized until January 1, 1991.[20] Effective January 2, 1991, these licensees had to comply with the channelization and 25 kHz bandwidth standards. Under the rules promulgated in 1981-82, this category of licensees should already be in compliance with the then-existing 25 kHz standard. The *Notice* did not propose to change this grandfathering provision.[21]

13. *Comments/Decision.* The comments support our proposal not to modify the existing grandfathering provision for this category of licensees.[22] These licensees have invested time and money to configure their systems to 25 kHz by the January 1, 1991 deadline. As the effective date already has passed, these MAS licensees have satisfied our channelization requirements and are operating efficiently in that sense.[23] We will not require those systems recently reconfigured to meet the earlier 25 kHz channelization standard to engage in further costly restructuring to meet the current, more stringent 12.5 kHz bandwidth requirement at this time.

MAS Stations Licensed On or Before May 11, 1988, Using 25 kHz Channels and MAS Stations Licensed After January 1, 1981, Using Channels Up to 50 kHz

14. *Proposal.* As with the previous provision, the third grandfathering provision allowed MAS stations using a 25 kHz channel authorized to operate on or before May 11, 1988, to continue to operate at that bandwidth indefinitely.[24] At that time, the costs of forcing these licensees to operate at 12.5 kHz did not outweigh the benefits of any additional spectrum efficiency. The *Notice* did not propose to change this grandfathering provision for these pre-May 11, 1988 licensees.[25] MAS stations licensed after May 11, 1988, must comply with the channelization and 12.5 kHz bandwidth requirements of Section 94.65(a)(1). Licensees desiring up to 50 kHz of contiguous bandwidth must justify need in their applications. 47 C.F.R. § 94.65(a)(1).

15. The *Notice* also proposed to grandfather indefinitely those MAS systems licensed after January 1, 1981, that use channels with bandwidths up to 50 kHz.[26] At the time of their original authorization, these licensees demonstrated need for the additional spectrum above 25 kHz under Section 94.65(a)(1). The *Notice* mentioned our initial reluctance to reduce these authorized bandwidths to 12.5 kHz because it would be administratively difficult for us to verify the spectrum requirements for all MAS stations licensed during this period.[27] We therefore requested comments on whether we should review the spectrum

requirements of existing licensees in light of the current channelization plan. We suggested that one option was to conduct such spectrum reviews at the license renewal time of these stations.[28]

16. *Comments*. All commenters urge that the grandfathering provision for pre-May 11, 1988 MAS licensees using 25 kHz remain in effect. UTC suggests that any change requiring these 25 kHz systems to adjust to the 12.5 kHz standard so recently after the 1988 grandfathering action would impose undue financial burdens and would be an arbitrary and capricious agency action.[29] UTC cites costs utilities would incur if they were required to change their operations to 12.5 kHz.[30] The comments do not address or suggest any changes in status of the post-May 11, 1988 licensees.

17. All commenters similarly endorse grandfathering MAS operations on bandwidths up to 50 kHz for licensees authorized after January 1, 1981.[31] UTC cites delays in MAS equipment manufacturing and utilities' vested business interests as reasons to endorse this new proposal.[32] While preferring our existing grandfathering rules, UTC did submit a spectrum review transition plan that would permit the recovery of MAS licensees' investment in facilities and equipment if the Commission were to require 12.5 kHz operation of entities previously grandfathered.[33] UTC suggests that licensees with systems authorized before May 11, 1988 and having greater than 12.5 kHz bandwidths could submit a statement of their frequency use along with their first renewal applications due after January 1, 2000. The licensees would have three options: certify by the next renewal that the system will operate on 12.5 kHz; justify the system's need for greater than 12.5 kHz bandwidth; or request continued operation as authorized until equipment is amortized and state the date of transition to 12.5 kHz. The Commission would then renew the license subject to one of these conditions.[34]

18. *Decision*. We believe that the most effective management of the spectrum will result by requiring MAS licensees to adhere to the 12.5 kHz standard which has been in place since 1988. Licensees originally authorized between January 1, 1981 and May 11, 1988 comprise a significant portion of the total MAS licenses. To increase the effectiveness of our spectrum management goals, we will require any MAS licensee originally licensed during this seven and one-half year period that requests spectrum in excess of the current 12.5 kHz standard to justify its need at the time of license renewal. While the UTC proposal provides a basic design for the implementation of such spectrum review program, we adjust their proposal in several respects.

19. Two groups of MAS licensees, as described in the *Notice*, will be subject to the current 12.5 kHz bandwidth requirement: the grandfathered MAS stations licensed on or before May 11, 1988 using 25 kHz channels and MAS stations licensed after January 1, 1981 using channels up to 50 kHz.[35] UTC advocates that any spectrum review program begin in the year 2000. After considering the time to implement this new standard, we conclude that UTC's proposed start date is too distant in the future to timely achieve our spectrum management goals. Therefore we propose a shorter period that still permits a reasonable time for the phase-out and amortization of less efficient MAS equipment. Beginning on June 1, 1996, both these groups of MAS licensees will be granted 12.5 kHz at the time of renewal.[36] We conclude that this 1996 date will permit the longest possible time for these 1981-1988 licensees to use their original equipment.[37] Our plan gives each licensee at least ten years from the date of original authorization to amortize its equipment.

20. At the outset, however, we emphasize that there are no specific criteria for justifying wider bandwidth.[38] The burden is on the applicant to provide a sufficient showing of need supporting additional bandwidth. At the time of the spectrum review, relevant information for justifying additional bandwidth could include: the required data rate, the minimum polling interval for remotes, the anticipated number of remotes, the polling cycle for the master station, a description of the types of data to be transmitted, a breakdown of overhead time and actual transmission time, and any other information (including terrain) that justifies the request. Although any one of these factors may be sufficient to justify the request by itself, our analysis will typically consider all characteristics of the MAS station on a case-by-case basis.

21. Starting on June 1, 1996, we will reduce the authorized standard bandwidth for this group of MAS licensees to the current 12.5 kHz standard. Those MAS licensees choosing to accept this reduced bandwidth will be issued a modified license reflecting this standard. Those MAS licensees desiring bandwidth above 12.5 kHz must submit their justifications simultaneously with the license renewal applications. MAS licensees who successfully justify their need for additional bandwidth will receive licenses at that requested bandwidth. MAS licensees who fail to justify the excess bandwidth, however, will be issued a modified license with the standard 12.5 kHz bandwidth. Licensees may continue to operate with their original authorized bandwidth until modifications are implemented. *See* 47 C.F.R. § 94.57. These licensees must place their stations in operation under the new 12.5 kHz operation within twelve months. 47 C.F.R. § 94.51. Any frequencies recovered from this review process will be available for reassignment according to our current licensing policies.

22. In sum, MAS licensees originally licensed between January 1, 1981 and on or before May 11, 1988 with bandwidths of 25 kHz or greater must justify their spectrum use above the 12.5 kHz standard at their first renewal period on or after June 1, 1996. Our review of such requested additional spectrum is consistent with our policy of allowing licensees to request up to 50 kHz upon a showing of need.[39] We will continue our other policies, such as channel splitting, to encourage efficient spectrum use.

IV. CONCLUSION

23. By this *Report and Order*, we update and clarify the MAS grandfathering provisions in Section 94.65(a)(1). With the elimination of one grandfathering provision and the expiration of another provision, licensees on the 928-929 MHz and 952-953 MHz frequencies that were originally authorized before August 1, 1975, will be dedicated to MAS operations based on 12.5 kHz paired channels within five years. Incompatible point-to-point operations and inconsistent MAS pairings will be removed from the MAS frequencies. We continue to grandfather MAS licensees originally authorized between August 1, 1975 and January 1, 1981, using 25 kHz licensees because these licensees have recently complied with our current channelization scheme. We remove the final grandfathering provision for stations licensed between January 1,

1981 and on or before May 11, 1988, by requiring these licensees to adhere to the current bandwidth standard at their first renewal after June 1, 1996. This last group of MAS licensees may request additional bandwidth by submitting justifications at the time of their license renewal. Our action benefits the public by furthering our goals of efficient spectrum management and the development of MAS services and technology.

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

24. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action:

This *Report and Order* revises the rules governing 900 MHz MAS operations to require licensees on these frequencies to comply with current channelization and bandwidth requirements within a specified timeframe. This action furthers the Commission's goals of enhancing spectrum efficiency while lessening the impact on licensees' investment in new equipment.

II. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant alternatives considered:

The *Notice of Proposed Rule Making* asked whether a review of MAS licensees' spectrum usage was needed at license renewal time. UTC outlined a three-step proposal for implementing such a review process. Upon consideration, we modified UTC's proposal and adopted our own spectrum review plan for certain MAS licensees.

VI. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED, that pursuant to Sections 4(i), 303(g), and 303(r) of the Communications Act of 1934, as amended, Part 94 of the Commission's Rules is AMENDED effective [30 days after publication in the *Federal Register*], as set forth in the Appendix below.

26. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 94 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 C.F.R. § 94.65 is amended by revising the introductory paragraph and paragraph (a)(1) to read as follows:

§ 94.65 Frequencies.

Frequencies normally available for assignment in this service are set forth with applicable limitations in the following tables:

(a) 928-960 MHz

(1) Multiple Address System frequencies. Multiple address system (MAS) frequencies are available for the point-to-multipoint transmission of a licensee's products or services, excluding video entertainment material, to a licensee's customer or for its own internal communications. The paired frequencies listed in this section shall be used for two-way interrogate/response communications between a master station and remote stations. Each master station operating on these frequencies is required to serve a minimum of four separate active remote stations. Ancillary one-way communications on paired frequencies are permitted on a case-by-case basis. Ancillary communications between interrelated master stations are permitted on a secondary basis. The normal channel bandwidth assigned will be 12.5 kHz. Upon adequate justification, however, channels with bandwidths up to 50 kHz may be authorized. Tables 2, 4, and 6 list frequencies with 25 kHz bandwidth channels. When licensed for a larger bandwidth, the system still is required to use equipment which meets the 0.00015 percent tolerance requirement. (*See* § 94.67). Systems licensed for frequencies in these MAS bands prior to August 1, 1975 may continue to operate as authorized until [five years from the date of adoption of the *Report and Order* in this proceeding] at which time they must comply with current MAS operations based on the 12.5 kHz channelization set forth in this paragraph. Systems licensed between August 1, 1975 and January 1, 1981, inclusive, were permitted to operate as authorized until January 1, 1991, at which time they were required to comply with the grandfathered 25 kHz standard bandwidth and channelization requirements set forth in this paragraph. Systems originally licensed after January 1, 1981, and on or before May 11, 1988 with bandwidths of 25 kHz and above must justify their need for spectrum in excess of the 12.5 kHz standard at their first renewal period on or after June 1, 1996.

* * * * *

3. 47 C.F.R. § 94.92 is amended by revising the introductory paragraph to read as follows:

§ 94.92 Technical standards for stations authorized prior to July 1, 1976.

Except as otherwise required by § 94.65(a)(1), the technical standards indicated in the table in this section apply to private microwave systems using the frequency bands above 952 MHz listed in the table and which were authorized prior to July 1, 1976, but after July 20, 1961. These standards shall not be applicable to transmitting equipment, including antennas, which was authorized to be operated on these frequencies prior to July 20, 1961, or for which an authorization was issued based on an application filed with the Commission prior to July 20, 1961.

* * * * *

FOOTNOTES

[1] Notice of Proposed Rule Making, PR Docket No. 90-260, 5 FCC Rcd 3079 (1990) (*Notice*).

[2] *See* Report and Order, PR Docket No. 87-5, 3 FCC Rcd 1564, 1567 (1988) (*1988 Report and Order*).

[3] Report and Order, Docket No. 19869, 52 FCC 2d 894 (1975) (*1975 Report and Order*), *recon. denied*, Memorandum Opinion and Order, Docket No. 19869, 56 FCC 2d 646 (1975).

[4] *1975 Report and Order*, 52 FCC 2d 894, App. B. The pre-August 1, 1975 licensees did have to conform to other technical requirements by August 1, 1985. *Id.* at 898-99. Transmitting equipment authorized between July 20, 1961 and July 1, 1976, would be permitted to operate indefinitely with former technical standards as long as interference did not exceed specified levels. *See* 47 C.F.R §§ 94.61(a) and 94.92.

[5] Report and Order, SS Docket No. 79-18, 46 Fed. Reg. 9950 (1981) (*1981 Report and Order*); Second Report and Order, SS Docket No. 79-18, 88 FCC 2d 1173 (1982) (*1982 Report and Order*).

[6] *1981 Report and Order*, 46 Fed. Reg. 9950 at ¶ 10.

[7] 1982 *Report and Order*, 88 FCC 2d at 1176. The Commission concluded that 25 kHz channels were the best compromise between cost and performance.

[8] *Id.* at App. A. In our 1988 revisions of Section 94.65, we inadvertently omitted the January 1, 1991 compliance date from 47 C.F.R. § 94.65(a)(1) (1989). *See Notice*, 5 FCC Rcd at 3079 n.8.

[9] *1988 Report and Order*, 3 FCC Rcd 1564 (1988), Erratum, 3 FCC Rcd 2467 (1988), *recon. denied*, Memorandum Opinion and Order, PR Docket No. 87-5, 4 FCC Rcd 2491 (1989).

[10] We clarify an ambiguity regarding the effective date of this third grandfathering provision. The *1988 Report and Order* stated that 25 kHz MAS stations licensed on or before May 1, 1988, would be grandfathered indefinitely. 3 FCC Rcd at 1566. The *Erratum* changed the"grandfathering date" to May 11, 1988. 3 FCC Rcd 2467. Section 94.65(a)(1) states that "systems licensed as of May 1, 1988, operating on the 25 kHz channels . . . will be grandfathered May 11, 1988." 47 C.F.R. § 94.65(a)(1) (1989). The *Notice*, however, grandfathered systems licensed as of May 11, 1988. *See* 5 FCC Rcd at 3079 n. 11. The commenters referred to licensees authorized as of the May 11, 1988 date. In following our discussion in the *Notice*, we will use the May 11, 1988 date to define this group of grandfathered licensees.

[11] In our reconsideration of the *1988 Report and Order*, we stated that those systems of special design or new technology that require special consideration can be handled through the waiver process. 4 FCC Rcd at 2493 n. 55. At that time we also stated that in the unusual case where we have licensed point-to-point MAS systems by waiver, we would grandfather such non-complying systems. *Id.* at 2493 n. 56.

[12] Additional channels of 25, 50, 100, and 200 kHz bandwidths were made available in the 932.5-935 MHz and 941.5-944 MHz bands for point-to-point OFS use. *Notice*, 5 FCC Rcd at 3080 n. 15, *citing* Second Report and Order, Gen. Docket No. 82-243, 4 FCC Rcd 2012 (1989), *aff'd*, Memorandum Opinion and Order, Gen. Docket No. 82-243, 5 FCC Rcd 1624 (1990). Note that the MAS frequencies end at 952.84375 MHz. 47 C.F.R. § 94.65(a)(1), Table 3.

[13] Comments of CSAA at 8.

[14] Comments of UTC at 2-3. Contrary to the Commission's interpretation of this grandfathering rule, UTC believes that pre-August 1, 1975 licensees can operate as authorized only until January 1, 1991.

[15] Comments of API at 4-5.

[16] Comments of API at 7; Comments of UTC at 3.

[17] *Notice*, 5 FCC Rcd at 3080.

[18] *Id.* at 3080 n. 14.

[19] Memorandum Opinion and Order, 4 FCC Rcd at 2493 n. 56. *See supra* note 11.

[20] 47 C.F.R. § 94.65(a)(1); *see 1981 Report and Order*, 46 Fed. Reg. 9950 at Appendix.

[21] *Notice*, 5 FCC Rcd at 3080.

[22] Comments of UTC at 3-4, Comments of API at 7-8.

[23] We clarify the text of 47 C.F.R. § 94.65(a)(1) to reflect that the 25 kHz, not the 12.5 kHz, channel bandwidth standard applies to MAS operators licensed between August 1, 1975 and January 1, 1981.

[24] 47 C.F.R § 94.65(a)(1); *see supra* notes 9 and 10.

[25] The *Notice* inadvertently omitted the text of this grandfathering provision from Section 94.65(a)(1). *See* 5 FCC Rcd at 3082.

[26] *Notice*, 5 FCC Rcd at 3080.

[27] *Id.*

[28] *Id.*

[29] Comments of UTC at 4.

[30] Comments of UTC at 6-7. UTC cites equipment modification costs of $450-500 for each remote radio and $900 for each master radio; replacement costs for this equipment were estimated at $1,200 and $6,000, respectively.

[31] *See* Comments of UTC at 5; Comments of API at 8-9.

[32] Comments of UTC at 5-6.

[33] *Id.* at 7-11, Reply Comments of UTC at 3.

[34] *Id.* at 8.

[35] Licensees subject to this spectrum review program also include those licensees authorized in this time period to operate above 50 kHz.

[36] The effective date of our implementation of the 12.5 kHz bandwidth standard was May 11, 1988. *See supra* n. 9.

[37] For example, licensees with 25 kHz and greater authorized in 1981 were renewed twice, in 1986 and 1991. Starting on June 1, 1996, they will have to justify their spectrum use. Licensees first authorized in 1984 were renewed in 1989 and 1994, and in 1999, they must justify their spectrum use. Licensees first authorized in 1988 were renewed in 1993 and will have to justify their spectrum use in 1998. This plan gives each yearly group of licensees at least ten years of equipment use and amortization of costs before requiring the renewal justification.

[38] *1988 Report and Order*, 3 FCC Rcd at 1566.

[39] 47 C.F.R. § 94.65(a)(1); *see 1988 Report and Order*, 3 FCC Rcd at 1566.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-26

In the Matter of

Amendment of Section 73.202(b), RM-7585
Table of Allotments,
FM Broadcast Stations.
(Hempstead, Texas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 17, 1991; Released: June 27, 1991

By the Chief, Allocations Branch:

1. At the request of Farmers Communications ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 6 FCC Rcd 1235 (1991), proposing the allotment of Channel 287A to Hempstead, Texas. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by the allotment of Channel 287A to Hempstead, Texas, since it could provide the community with its first local FM service. Channel 287A can be allotted to Hempstead in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.9 kilometers (8.6 miles) northwest of the community[1] in order to avoid a short-spacing to Station KHCB(FM), Channel 289C, Houston, Texas.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 12, 1991,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Hempstead, Texas	287A

4. The window period for filing applications will open on **August 13, 1991,** and close on **September 12, 1991.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 287A at Hempstead are North Latitude 30-11-25 and West Longitude 96-10-20.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-181

In the Matter of

Amendment of Section 73.202(b), RM-7696
Table of Allotments,
FM Broadcast Stations.
(California and Rolla,
Missouri)

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: June 17, 1991; Released: June 27, 1991

Comment Date: August 19, 1991
Reply Comment Date: September 3, 1991

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Town and Country Communications, Inc. ("petitioner"), requesting the substitution of Channel 232C2 for Channel 232A at California, Missouri. Petitioner also requests modification of its license for Station KZMO-FM to specify operation on the higher class channel. Petitioner provided an engineering study in support of the proposal and indicated it would apply for the channel, if allotted.

2. We believe petitioner's proposal warrants consideration because the proposed substitution would provide California with a wide coverage area FM service. Petitioner notes that Channel 232C2 can be allotted to California, Missouri, in compliance with the minimum distance separation requirements of the Commission's Rules provided Channel 292A is substituted for Channel 232A at Rolla, Missouri.[1] Channel 232A at Rolla is presently licensed to Station KQMX(FM). The proposed substitution at Rolla can be accomplished in compliance with the minimum distance separation requirements at the current site for Station KQMX(FM).[2] We shall also propose to modify the license of Station KZMO-FM, Channel 232A, to specify operation on Channel 232C2 in accordance with Section 1.420(g) of the Commission's Rules.

3. Whenever an existing licensee is ordered to switch frequencies in order to accommodate a new channel allotment, we require the proponent of a new allotment to make a commitment that it would reimburse the affected station for the costs incurred in changing frequencies. Petitioner has acknowledged its responsibility to reimburse Station KQMX(FM) for the reasonable costs in changing frequency.

4. In view of the above, we believe the public interest would be served by proposing the allotment of Channel 232C2 to California, Missouri, since it could provide the community with its first wide coverage area FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

	Channel No.	
City	Present	Proposed
California, Missouri	232A	232C2
Rolla, Missouri	232A, 287C1	287C1, 292A

5. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Progressive Broadcasting Company of Missouri, the licensee of Station KQMX(FM), Rolla, Missouri, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 292A in lieu of Channel 232A.

6. Pursuant to Section 1.87 of the Commission's Rules, Progressive Broadcasting Company of Missouri, may, not later than **August 19, 1991,** file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause.* The Commission may call on Progressive Broadcasting Company of Missouri to furnish additional information. If Progressive Broadcasting Company of Missouri raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Progressive Broadcasting Company of Missouri will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public's interest.

7. IT IS FURTHER ORDERED, That the Secretary of the Commission, SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

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[1] The coordinates for Channel 232C2 at California are 38-26-00 and 92-26-00.

[2] The coordinates for Channel 292A at Rolla are 37-57-50 and 91-45-54. We do note that Channel 292A at Station KQMX(FM)'s site is currently short spaced to the allotment site for Channel 291C2, Ashland, Missouri, and the licensed sites for Channel 292A, Station KOZX, Cabool, Missouri, and Channel 295C1, Station KTXY, Jefferson City, Missouri. However, the construction permit for Channel 291C2, Ashland (BPH-880219MD), is fully spaced to the new channel at Rolla. Station KOZX, Channel 292A, Cabool, was ordered to Channel 251A in MM Docket 86-410 and Station KTXY, Channel 295C1, Jefferson City, holds a construction permit for Channel 295C at a site which does not conflict with Channel 292A at Rolla (BMPH-900727IC). Therefore, Channel 292A can be proposed as a substitution for Channel 232A at Rolla, consistent with the Commission's spacing requirements.

Progressive Broadcasting
Company of Missouri
P.O. Box 728
Rolla, Missouri 65401
(Licensee of Station
KQMX, Rolla, MO)

Sobocomo Radio, Inc.
505 Elm Avenue
Takoma Park, Maryland 20912
(Permittee of
Channel 291C2,
Ashland, MO BPH-880219MD)

Central Missouri
Broadcasting, Inc.
420 N.W. Fifth Street
Evansville, Indiana 47708
(Licensee of Station KTXY,
Jefferson City, MO)

KVVC Broadcasting, Inc.
P.O. Box 514
Cabool, Missouri 65689
(Licensee of Station KOZX,
Cabool, MO)

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **August 19, 1991,** and reply comments on or before **September 3, 1991,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John M. Spencer

Leibowitz & Spencer

One S.W. Third Avenue, Suite 1450

Miami, Florida 33131

(Counsel for the petitioner)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is

directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-182

In the Matter of

Amendment of Section 73.202(b), RM-7733
Table of Allotments,
FM Broadcast Stations.
(Liberty, Kentucky)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 17, 1991; Released: June 27, 1991

Comment Date: August 19, 1991
Reply Comment Date: September 3, 1991

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Carlos D. Wesley ("petitioner"), permittee of Station WKDO(FM), Channel 254A, Liberty, Kentucky, requesting the substitution of Channel 254C3 for Channel 254A at Liberty, Kentucky, and modification of his construction permit (BPH-891017IB) to specify operation on the higher class channel. Petitioner states his intention to apply for the channel, if allotted.

2. We believe the petitioner's proposal warrants consideration since it could provide a wide coverage area FM station to Liberty. An engineering analysis has determined that Channel 254C3 can be substituted for Channel 254A at Liberty in compliance with the Commission's minimum distance separation requirements at the site specified in the construction permit, with a site restriction of 2.2 kilometers (1.4 miles) southeast of the community.[1] We shall also propose to modify petitioner's construction permit to specify operation on Channel 254C3 in lieu of Channel 254A at Liberty. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of the higher class channel at Liberty or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such interested parties.

3. In view of the above, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Liberty, Kentucky	254A	254C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **August 19, 1991,** and reply comments on or before **September 3, 1991,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Carlos D. Wesley, Owner
WKDO(FM) Radio Station
P.O. Box B
Liberty, Kentucky 42539
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] The coordinates for Channel 254C3 at Liberty are North Latitude 37-18-22 and West Longitude 84-55-02.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-213

In the Matter of

Amendment of Section 73.202(b),	RM-7083
Table of Allotments,	RM-7416
FM Broadcast Stations.	RM-7417
(Pikeville, Kentucky,	
Clinchco, Virginia and	
Matewan, West Virginia)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 17, 1991; Released: June 27, 1991

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 2673 (1990), issued in response to a petition for rule making filed by East Kentucky Broadcasting Corporation ("East Kentucky"), licensee of Station WDHR(FM), Channel 221A, Pikeville, Kentucky, proposing the substitution of Channel 294C3 for Channel 221A at Pikeville, Kentucky, and modification of its license to specify the higher class channel. In addition, the *Notice* proposed the substitution of Channel 221A for Channel 294A at Matewan, West Virginia, and modification of Station WVKM's construction permit to specify the new channel. An *Order to Show Cause* was issued to Three States Broadcasting Company, Inc. ("Three States"), permittee of Station WVKM(FM), Channel 294A, Matewan, West Virginia, directing the permittee to demonstrate why its construction permit should not be modified to specify operation on Channel 221A in lieu of Channel 294A.

2. In response to the *Notice*, East Kentucky filed a counterproposal requesting the substitution of Channel 226C2 for Channel 221A at Pikeville, Kentucky, and the modification of Station WDHR(FM)'s license to specify operation on Channel 226C2. The upgrade at Pikeville on Channel 226C2 requires the substitution of Channel 221A for Channel 226A at Clinchco, Virginia, and modification of the license for Station WDIC(FM) to specify operation on Channel 221A. Three States also filed a counterproposal requesting the substitution of Channel 294C3 for Channel 294A at Matewan, West Virginia, and the modification of its construction permit to specify Channel 294C3.[2] East Kentucky filed reply comments. In response to the counterproposals, Three States and Dickenson County Broadcasting Corporation ("Dickenson"), licensee of Station WDIC(FM), Channel 226A, Clinchco, Virginia, filed comments. After the record closed, East Kentucky filed a partial opposition to Dickenson's reply comments and Dickenson filed a motion to strike the opposition. In addition, Dickenson filed comments in support of East Kentucky's counterproposal.[3]

3. East Kentucky in its counterproposal states that Station WDHR(FM) may be upgraded on Channel 226C2 at its present transmitter site if Channel 221A is substituted at Clinchco, Virginia. East Kentucky argues that the counterproposal to upgrade to Class C2 status offers a greater public interest benefit than the proposal advanced in the Commission's *Notice*. East Kentucky notes that Station WDIC(FM) at Clinchco will be able to operate at 6 kilowatts on Channel 221A. East Kentucky, maintains that this channel change qualifies as an "incompatible channel swap" pursuant to Section 1.420(g)(3) of the Commission's rules, because Station WDHR's Channel 221A is the only channel which can be assigned at the Clinchco station's site. East Kentucky states its intention to apply for Channel 226C2, if allotted, and East Kentucky states its willingness to reimburse Dickenson for reasonable costs in changing its channel.

4. In response to the *Order to Show Cause*, Three States filed a counterproposal, asserting that Station WVKM(FM) may upgrade on its present channel to Class B1 status. Three States states its intention to apply for Channel 294C3, if allotted. Furthermore, Three States notes that it has filed an application for modification of its construction permit to operate at 6 kilowatts. Three States argues that the substitution of Channel 221A for Channel 294A at Matewan would preclude the proposed increase in power for Station WVKM(FM) and, therefore, Channel 221A is not an equivalent channel.[4]

5. East Kentucky in its reply comments argue that a transmitter site for Channel 294B1 at Matewan is unavailable in Zone I. East Kentucky asserts that the Commission's rules states the class of an FM station is determined by the location of the transmitter site rather than the city of license. East Kentucky states that Three States has, therefore, requested a class of channel which may not be assigned to Matewan. East Kentucky cites *Greenup, Kentucky*, 2 FCC Rcd 4319 (1987), where the Commission permitted a petitioner to amend its proposal only on the basis that a site was located in the appropriate zone for the class of channel specified. East Kentucky contends that here, no such correction is available because no site may be located in Zone I for the 294B1 channel specified by Three States. In response to Three States' claim that

[1] The community of Clinchco, Virginia, has been added to the caption.

[2] Public Notice of the counterproposals was given July 2, 1990, Report No. 1820, (RM-7416, RM-7417).

[3] On January 8, 1991, Dickenson filed letter comments supporting the substitution of Channel 226C2 for Channel 221A at Pikeville, Kentucky and the substitution of Channel 221A for Channel 226A at Clinchco, Virginia. We have accepted this pleading, because it aids in the expeditious resolution of this proceeding by eliminating the need for the issuance of an *Order to Show Cause* concerning the change in channel for Station WDIC(FM) at Clinchco, Virginia, proposed by East Kentucky. Dickenson's letter comments render moot its reply comments and the late filed pleadings in response thereto. These pleadings, therefore, will not be discussed.

[4] This contention is rendered moot due to the resolution of this proceeding.

Channel 221A at Matewan is not an equivalent channel, East Kentucky contends that its proposal is governed by the rules in effect prior to October 2, 1989, and that therefore Channel 221A at 3 kilowatts is an equivalent channel. Further, East Kentucky demonstrates that Station WVKM(FM) may operate on Channel 221A with 6 kilowatts by relocating to another site, signing an agreement with stations short-spaced under the new rules, or by using a directional antenna. Finally, East Kentucky notes that it conducted an engineering analysis which determined that a transmitter site which minimizes the population within the area of interference to TV Channel 6 would be outside the Clinchco 221A preclusion area, and concludes that no preclusion to noncommercial Channel 220A will be caused by the substitution of Channel 221A at Clinchco.

6. Three States, in its reply comments, states that it inadvertently requested a Class B1 channel, and that Channel 294C3 should have been specified instead. Three States contends that this discrepancy is due to the fact that Matewan, West Virginia, lies on the western border of Virginia and Kentucky near the boundary lines of Zone I and Zone II. Three States presently holds a construction permit for Channel 294A at Matewan which lies in Zone I. Three States submits a channel spacing study which clearly indicates that Channel 294C3 can be allotted to Matewan and will meet all separation requirements of the Commission's Rules.[5]

7. In consideration of the above, we believe the public interest would be served by substituting Channel 226C2 for Channel 221A at Pikeville, Kentucky, as well as the substitution of Channel 221A for Channel 226A at Clinchco, Virginia.[6] In addition Channel 294C3 can be substituted for Channel 294A at Matewan, West Virginia.[7] Channel 226C2 can be allotted to Pikeville, Kentucky, in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.5 kilometers (2.2 miles) southwest at Station WDHR(FM)'s present transmitter site.[8] Channel 221A can be allotted to Clinchco, Virginia, in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.6 kilometers (3.5 miles) north at Station WDIC(FM)'s present transmitter site.[9] The site restriction is necessary in order to avoid a short-spacing to a construction permit (BPED-900108NR) for Channel 220C2, Marion, Virginia. Channel 294C3 can be allotted to Matewan, West Virginia, in compliance with the Commission's minimum distance separation requirement with a site restriction of 14.1 kilometers (8.7 miles) southwest of the community.[10] The site restriction is necessary in order to avoid a short-spacing to a construction permit (BPED-880104MQ) for Channel 294A, Lindside, West Virginia. We will modify the licenses of Station BWDHR(FM), Pikeville, Station WVKM(FM), Matewan, and Station WDIC(FM), Clinchco, to specify the new channels.

8. Commission policy requires reimbursement to affected stations for the reasonable costs associated with changing frequencies. *See Circleville and Columbus, Ohio*, 8 FCC 2d 159 (1967). East Kentucky has stated its intention to reimburse Dickenson for all reasonable expenses incurred in changing its frequency to Channel 221A, and Dickenson has consented to the substitution.

9. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 12, 1991,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

City	Channel No.
Pikeville, Kentucky	226C2
Clinchco, Virginia	221A
Matewan, West Virginia	294C3

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WDHR(FM), Pikeville, Kentucky IS MODIFIED, to specify operation on Channel 226C2 in lieu of Channel 221A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

---

[5] Section 73.206(b) restricts Class B channels/stations to Zone I and Class C channels/stations to Zone II. A staff engineering analysis determined that a transmitter site for Channel 294C3 at Matewan, West Virginia is available in Zone II. Therefore, the allotment of Channel 294C3 at Matewan could be made in compliance with Sections 73.205 and 73.206 of the Commission's Rules. We will permit Three States to amend its counterproposal to specify the Class C3 channel, as no prejudice could result to any party from this amendment.

[6] East Kentucky's upgrade on Channel 226C2 is being treated under the provisions of Section 1.420(g)(3) of the Commission's Rules because the proposal constitutes an "incompatible channel swap." We stated in the *Notice* at 5 FCC Rcd 2673:

> Section 1.420(g)(3) allows the modification of a station's license to a higher class channel if the channel is a co-channel or adjacent channel mutually exclusive with the existing license. The Commission has acknowledged that it will consider analogous proposals involving channel substitutions at other communities which would be necessary to create a mutually exclusive relationship required under Section 1.420(g)(3), and determined to consider these "incompatible channel swaps" on a case-by-case basis....*See Modification of FM Broadcast Licenses to Higher Class Co-channels or Adjacent Channel*, 60 R.R. 2d 114, 120 (1986).

[7] We note that the original petition was filed prior to October 2, 1989. However, the counterproposals was filed after October 2, 1989, and are considered under the new minimum distance spacing requirements.

[8] The coordinates for Channel 226C2 at Pikeville are North Latitude 37-27-58 and West Longitude 82-33-02.

[9] The coordinates for Channel 221A at Clinchco are North Latitude 37-12-43 and West Longitude 82-21-37.

[10] The coordinates for Channel 294C3 at Matewan are North Latitude 37-32-30 and West Longitude 82-17-00.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WVKM(FM), Matewan, West Virginia IS MODIFIED, to specify operation on Channel 294C3 in lieu of Channel 294A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WDIC(FM), Clinchco, Virginia IS MODIFIED, to specify operation on Channel 221A in lieu of Channel 226A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in license (BMLH-900706KE) except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license (BMLH-900706KE) except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

13. IT IS FURTHER ORDERED, That the petition of East Kentucky Broadcasting Corporation (RM-7083) requesting the substitution of Channel 294C3 for Channel 221A at Pikeville, Kentucky, and the substitution of Channel 221A for Channel 294A at Matewan, West Virginia, IS HEREBY DISMISSED.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-242

In the Matter of

Amendment of Section 73.202(b),	RM-6939
Table of Allotments,	RM-7705
FM Broadcast Stations.	
(Huntington, Texas)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 17, 1991; Released: June 27, 1991

By the Chief, Allocations Branch:

1. The Commission has before it the *Notice of Proposed Rule Making* ("*Notice*"), 4 FCC Rcd 4904 (1989), proposing, *inter alia*, the reclassification of Channel 270A, Station KAQU(FM), Huntington, Texas, to Channel 270C3 and modification of the construction permit of Station KAQU(FM) accordingly. Prior to the adoption of the *Notice*, Angelina Broadcasting Corporation (formerly Huntington Broadcasting Corporation) ("Angelina"), licensee of Station KAQU(FM), submitted a petition for rule making asking the Commission to substitute Channel 270C2 for Channel 270A at Huntington and to modify its authorization accordingly. This petition was treated as a counterproposal to the *Notice*.[1] Angelina filed comments expressing interest in either the Class C2 or the Class C3 substitution, but stated that it preferred the Class C2 substitution. Angelina stated that it would file an application for either channel, if allotted. The Federal Aviation Administration ("FAA") also filed comments.[2]

2. We believe the public interest would be served by the substitution of Channel 270C2, rather than Channel 270C3, for Channel 270A at Huntington, since it could provide the community with a wider area FM broadcast service. Channel 270C2 can be allotted to Huntington consistent with the Commission's spacing requirements at petitioner's current transmitter site.[3] We will also authorize a modification of Angelina's license for Station KAQU(FM), Channel 270A, Huntington, to specify operation on Channel 270C2 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 12, 1991,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Huntington, Texas	270C2

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station KAQU(FM), Huntington, Texas, IS MODIFIED to specify operation on Channel 270C2 in lieu of Channel 270A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding contact Michael Ruger, Mass Media Bureau, (20[illegible] 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] Public notice of Angelina's counterproposal was given on August 18, 1989, Report No. 1791, and assigned rule making number RM-6939. Due to Commission staff error, Angelina's proposal was again placed on public notice on April 18, 1991, Report No. 1843, and assigned a new rule making number, RM-7705. Angelina filed additional comments in support of its proposal in response to the 1991 public notice. No counterproposals were filed.

[2] The FAA filed comments concerning this docket and other dockets initiated simultaneously. *See* 5 FCC Rcd 2152 (1990). The FAA's concerns will be treated consistent with the treatment afforded in other proceedings. 5 FCC Rcd 2152, n.4.

[3] The coordinates for Channel 270C2 at Huntington, Texas, are 31-20-05 and 94-38-13.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-183

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Lexington and Pickens, Mississippi) — RM-7735

NOTICE OF PROPOSED RULE MAKING

Adopted: June 18, 1991; Released: June 27, 1991

Comment Date: August 19, 1991
Reply Comment Date: September 3, 1991

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the petition for rule making filed by J. Scott Communications, Inc. ("petitioner"), licensee of Station WLTD(FM), Channel 290C3, Lexington, Mississippi.[1] Petitioner requests the reallotment of its channel to Pickens, Mississippi, as a Class C2 channel and modification of its license accordingly. Petitioner states that it will apply for the channel, if allotted.

2. Petitioner claims that its request complies with Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a higher class channel and/or a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Petitioner submits that the allotment of Channel 290C2 would provide Pickens, a community of 1,386 persons,[2] with its first local aural transmission service, whereas Lexington, a community of 2,628 persons, would retain Stations WARR(FM) and Station WXTN(AM).

3. We believe the public interest would be served by the proposed reallotment of Channel 290C3 from Lexington, Mississippi, to Pickens, Mississippi, as a Class C2 channel, since it would provide Pickens with its first local aural transmission service and permit Station WLTD(FM) to expand its service area. Channel 290C2 can be allotted to Pickens, Mississippi, in compliance with the Commission's minimum distance separation requirements at petitioner's proposed site 26.3 kilometers (16.3 miles) southwest of the community.[3] As requested, we also propose to modify petitioner's license for Station WLTD(FM) to specify the higher powered channel at the new community. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for use of the channel at Pickens or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

4. Accordingly, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

City	Channel No. Present	Proposed
Lexington, Mississippi	273C3, 290C3	273C3
Pickens, Mississippi	---	290C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **August 19, 1991,** and reply comments on or before **September 3, 1991,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Linda J. Eckard
Mark N. Lipp
Mullin, Rhyne, Emmons
and Topel, P. C.
1000 Connecticut Avenue, N.W., Suite 500
Washington, D.C. 20036
(Counsel for the petitioner)

7. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Order* to the following:

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[1] The license for Station WLTD(FM), Channel 292A, was modified to specify operation on Channel 290C3 in MM Docket No. 89-373, effective July 23, 1990. *See* 5 FCC Rcd 3481 (1990). J. Scott Communications, Inc. has filed an application for Channel 290C3 (BPH-901123IB).

[2] Populations figures are from the 1980 U.S. Census.

[3] The coordinates for Channel 290C2 at Pickens are 32-39-38 and 90-03-20. This site is fully spaced to Station WAKH, Channel 298C1, McComb, Mississippi. On April 16, 1991, the construction permit for Channel 289C, McComb, was forfeited, removing the short spacing between Channel 290C2, Pickens and Channel 289C, McComb. We shall serve Station WAKH with a copy of this *Order*.

Fortune Media, Incorporated
Station WAKH(FM)
P.O. Box 1143
McComb, Mississippi 39648

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: June 21, 1991

Report No. DS-1097

NEW RULES FOR PART 25 - SATELLITE COMMUNICATIONS

On May 21, 1991 the Commission released the First Report and Order regarding "Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed-Satellites at Reduced Orbital Spacings and to Revise Application Processing Procedures for Satellite Communications Services." (CC Docket No. 86-496). The effective date for the new rules is June 28, 1991.

Applicants for domestic and international earth stations should continue to use Form 403 until the new Form 493 has been approved by the Office of Management and Budget. A public notice will be issued when the form is approved for use. In the interim, beginning on June 28, 1991, applicants should provide all the information required on Form 493 in narrative form as an attachment to Form 403. This will expedite processing and is intended to prevent the staff from having to prepare and send deficiency letters with respect to incomplete applications.

While much of the information is currently required to be submitted together with Form 403, we remind applicants that beginning on June 28, 1991, they will be required to submit certain information necessary to effectuate international coordination of the earth station. *See* 47 C.F.R. § 25.202(c). Specifically, item 23 on Form 493 requires the applicant to determine if the coordination contour for an earth station extends into another country. If it does, applicants should provide the name of that country and a plot of the coordination contour.

Beginning on June 28, 1991, no licenses will be issued for domestic receive-only earth stations. All applications for domestic receive-only earth stations will be processed as requests for registration. As indicated in the First Report and Order, applications for international receive-only earth stations will continue to be licensed. We intend to register all domestic receive-only applications that are pending on the effective date of the new rules. All previously licensed domestic receive-only earth stations will be converted into registrations. Thus, beginning on June 28, 1991, applications to assign, transfer or modify these facilities will no longer be required and the procedures applicable to registered facilities should be followed.

Please contact Roger Herbstritt at (202) 634-4076, or Herb Neumann at (202) 634-1373 for further information.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 91-116

In the Matter of

AT&T COMMUNICATIONS Transmittal No. 2920

Revisions to Tariff F.C.C. No. 15

Competitive Pricing Plan No. 16

ORDER

Adopted: June 21, 1991; Released: June 24, 1991

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. AT&T Communications (AT&T) filed Transmittal No. 2920 on February 26, 1991. This transmittal introduces AT&T's sixteenth Competitive Pricing Plan (CPP16) under AT&T Tariff F.C.C. No. 15, scheduled to become effective on June 26, 1991. According to AT&T, CPP16 constitutes its competitive response to an offer made by MCI Telecommunications Corporation (MCI) to Siebe, Inc. (Siebe). Petitions against this transmittal were filed by MCI Telecommunications, Inc., US Sprint Communications Company Limited Partnership (US Sprint), and the Competitive Telecommunications Association (CompTel). [1] For the reasons discussed below, we suspend Transmittal 2920 for the full five-month statutory period.

II. BACKGROUND

2. AT&T contends that this transmittal represents its competitive response to an offer made by MCI to provide telecommunications services at rates that are significantly below MCI's tariffed rates. According to AT&T, Siebe expressed its intention to switch its business from AT&T to MCI unless AT&T countered MCI's offer. AT&T Transmittal No. 2920, Description and Justification (D&J) at 1-2. CPP16 would provide Siebe with a 2 percent monthly discount off SDN Expanded Volume Plan Part IIA. AT&T states that these services will be provided at rates 2 percent above MCI's tariffed rate, 7 percent below AT&T's most economical tariff rates, and that the CPP16 rates exceed MCI's off-tariff rates as well as its tariffed rates in every mileage band and time period. *Id.*, Ennis Affidavit at 5. Siebe is required to commit to 17 million minutes of SDN usage per year for three years, the term of the CPP, in order to obtain the SDN discount. AT&T Tariff F.C.C. No. 15, Transmittal No. 2920, Section 18.1, 2nd Revised Page 48.

III. PLEADINGS

A. Petitions

3. CompTel and MCI incorporate by reference their pleadings and petitions against each prior Tariff 15 offering. *See* CompTel Petition at 2; MCI Petition at 4.

4. The petitioners argue that CPP16 fails to satisfy the competitive necessity test[2] upon which AT&T relies as justification for this filing. *See, e.g.*, CompTel Petition at 2; MCI Petition at 5. According to MCI, the competitive necessity doctrine applies to service provided to classes of customers, not single customers. Thus, the three-year term requirement and condition that customers must have received MCI's competing offer, combined with AT&T's assertion that MCI has not offered its Virtual Network (VNET) service at these rates to any other customer, effectively limit CPP16 to a single-customer offering. MCI Petition at 4-5, *citing* AT&T D&J, Ennis Affidavit at 5. MCI notes that AT&T's tariff requires the customer to demonstrate its receipt of a substantially similar offer from a competitor, but is silent as to the nature of the demonstration. *Id.* at 5.

5. MCI also contends that AT&T is not at risk of losing all outbound traffic to MCI's discounted rates. According to MCI, AT&T was awarded the business for which MCI had been invited to bid principally because one of Siebe's affiliates wished to keep its current service provider and the customer, for its part, wanted to concentrate its business with one carrier. MCI asserts that, without resorting to a Tariff 15 offer, AT&T won Siebe's business a month before the Ennis affidavit, and the customer so apprised MCI. *Id.* at 7-8. Thus, MCI states, the terms of AT&T's offer are not reasonably designed to meet competition without undue discrimination, as AT&T won the customer's business with its standard pricing. MCI therefore argues that the proposed discount adversely affects other AT&T ratepayers by reducing revenues unnecessarily. *Id.* at 8.

6. MCI disputes AT&T's contention that, because CPP16 is a new service, no cost of service study is required. *Id.* at 6-7. MCI charges that these plans do not offer new services but merely price preferences for existing services. Therefore, says MCI, AT&T's reliance on the Commission's cost support rules for new services is improper. *Id.* MCI further argues that CPP16's supposed compliance with the net revenue test is not relevant, citing the Commission's statement that new services under Tariff 15 are not eligible for review under that standard. *Id.* at 6 n.4, *citing* the *Price Cap Order*.[3]

7. US Sprint also charges that CPP16 is not justified by the competitive necessity standard, fails to comply with Section 61.38 of the Commission's Rules, and fails to satisfy the net revenue standard. US Sprint contends that the customer-specific offering is inherently discriminatory, and that AT&T has failed to satisfy the competitive necessity test because (1) it has not been necessary to even meet the competition's price; (2) the offering is unlawfully restricted, especially with respect to resellers unlikely to receive similar offers from other carriers; and (3) the net revenue test, even if satisfied, cannot reasonably be applied to determine the lawfulness of customer-specific offerings. US Sprint Petition at 2-4.

8. US Sprint adds that the Siebe offer is an attempt to circumvent price cap regulation by offering "nothing more than discounted SDN" service, and suggests the

Commission did not anticipate the consequences of selective transfer of price capped services into Tariff 15. *Id.* at 5. Rather than accept the prospect of cross-subsidization and the incremental pricing of Tariff 15 offerings, US Sprint avers, the Commission should prohibit Tariff 15 offerings altogether. *Id.* at 6-7. Finally, as to the net revenue showing adduced by AT&T, US Sprint joins MCI's claim that the Commission has never authorized the use of that test to justify Tariff 15 offerings and stated the contrary in the *Price Cap Order*. Accordingly, Sprint states the absence of a more stringent showing contemplated by conventional tariff review warrants rejection of the AT&T transmittal. *Id.* at 8.

B. AT&T Reply

9. AT&T contends that while MCI questions the competitive necessity of AT&T's offer to Siebe, it does not dispute either AT&T's characterization of the MCI offer or the rate relationships described by AT&T. AT&T states that Siebe selected AT&T precisely because AT&T agreed to offer the rates subsequently tariffed under Transmittal 2920, and adds that the MCI offer was still available when Siebe opted for the AT&T alternative. AT&T Reply at 3-4, Sinclair Letter (Appendix A). AT&T adds that accepting MCI's argument would effectively render the competitive response doctrine a nullity, enabling competitors to negate AT&T offers by after-the-fact claims that acceptance of an AT&T proposal constitutes rejection of the competitor's offer. *Id.* at 4.

10. As to petitioners' contentions that single-customer offers by dominant carriers are prohibited by the Communications Act, AT&T replies that these arguments are foreclosed by Commission and judicial decisions authorizing such offers when limited to the scope of similar offers by competitors. AT&T states that the Communications Act does not distinguish between dominant and non-dominant carriers, and AT&T's competitors routinely initiate single-customer pricing. Thus, reasons AT&T, if the practice is unlawful for dominant carriers it is no less so when engaged in by non-dominant carriers. *Id.* at 5-7. AT&T adds that CPP16 is available to any customer that has available to it the MCI offer, and asserts that its positive net revenue showing complies with Section 61.38 of the Commission's Rules, and is appropriate in the context of competitive offerings. *Id.* at 8-9.

IV. DISCUSSION

11. We conclude, based on our review of the instant transmittal and the pleadings, that AT&T's offering raises significant issues that warrant investigation. Single-customer offerings raise serious questions of compliance with the prohibition against unreasonable discrimination established by the Communications Act. Yet, as the Commission observed at the time it initiated its investigation of the first Tariff 15 offering, the Holiday Rate Plan, "[l]egal precedent supports the view that otherwise discriminatory rates can be reasonable where justified by competitive necessity."[4] Determining whether AT&T may properly rely upon competitive necessity in this instance, however, requires further analysis and additional information from interested parties.

12. We also conclude that the issues raised by CPP16 warrant exercise of our discretion to suspend this transmittal pending investigation. We recognize that suspension is a severe regulatory action because it delays the implementation of service offerings. In deciding whether to suspend, we must balance the interests of ratepayers, the filing carrier, and the competitive process. On balance, we have decided that the potential for a violation of Section 202(a) of the Communications Act by the instant transmittal, and consequently the potential for harm to other ratepayers, outweighs any negative impact that suspension of these rates may have. Therefore, we conclude that the Commission's preference for avoiding unnecessary disruption of the competitive balance in the marketplace does not require that we refrain from suspending this transmittal.

13. We will designate the issues to be examined in this investigation in a future Order.

V. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to Sections 204(a) and 403 of the Communications Act of 1934, 47 U.S.C. §§ 204(a), 403, an investigation IS INSTITUTED into the lawfulness of the tariff revision filed by AT&T Communications in Tariff F.C.C. No. 15, Transmittal No. 2920.

15. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the instant tariff revision filed by AT&T Communications IS SUSPENDED until November 27, 1991.

16. IT IS FURTHER ORDERED that AT&T Communications SHALL FILE a supplement reflecting this suspension no later than five business days from the release of this Order. Special Permission No. 91-476 is assigned for this purpose.

17. IT IS FURTHER ORDERED that the petitions to reject AT&T Communications Transmittal No. 2920 filed by MCI Telecommunications, Inc., and US Sprint Communications Company Limited Partnership ARE DENIED.

18. IT IS FURTHER ORDERED that the petition to reject or suspend and investigate AT&T Communications Transmittal No. 2920 filed by the Competitive Telecommunications Association IS GRANTED to the extent indicated herein and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] MCI Petition To Reject, filed Mar. 13, 1991 (MCI Petition); US Sprint Petition To Reject, filed Mar. 13, 1991 (US Sprint Petition); and CompTel Petition To Reject or, in the Alternative, To Suspend and Investigate, filed Mar. 13, 1991 (CompTel Petition). AT&T replied to these petitions on Mar. 25, 1991 (AT&T Reply).

[2] AT&T relies on the competitive necessity test described in the *Private Line Guidelines*. The *Private Line Guidelines* state that, to justify a discriminatory rate on the grounds of competitive necessity, a carrier must show that:

1) an equal or lower priced competitive alternative -- a similar offering or set of offerings from other common carriers or customer-owned systems -- is generally available to customers of the discounted offering;

2) the terms of the discounted offering are reasonably designed to meet competition without undue discrimination; and

3) the volume discount contributes to reasonable rates and efficient services for all users.

Private Line Rate Structure and Volume Discount Practices, CC Docket No. 79-246, 97 FCC 2d 923, 948 (1984).

[3] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Report and Order, 4 FCC Rcd 2873, 3034-35 n.671 (1989)(*Price Cap Order*).

[4] AT&T Communications, CC Docket No. 88-471, Memorandum Opinion and Order, 4 FCC Rcd 7712, 7713 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NYNEX Telephone Companies — Transmittal No. 8
Revisions to Tariff F.C.C. No. 1

ORDER

Adopted: June 21, 1991; Released: June 21, 1991

By the Chief, Common Carrier Bureau:

1. In Transmittal No. 8, New York Telephone Co. (NYT) and New England Telephone and Telegraph Co. (NET) (together, NYNEX) propose a new service called "Zero Minus Operator Passthrough Service, Phase II (ZMOP-II)." Currently, callers dialing "0" without any other digits (Zero Minus, or "0-") seeking directory assistance for interLATA calls are routed to a NYNEX operator. The NYNEX operator then delivers the call either to an interexchange carrier's (IXC) operator or to an IXC-designated Operator Service Provider (OSP). NYNEX Transmittal No. 8, Description and Justification (D&J), § 1 at 1. Under ZMOP-II, end users seeking interLATA directory assistance would be treated in one of three ways, at the option of the IXC. The IXC could have its customers' calls routed to itself, to an IXC-designated OSP, or to a NYNEX recording instructing the customer to contact the IXC for further instruction. *Id.* § 2 at 1. NYNEX plans to charge the IXC or the OSP its tariffed Operator Passthrough rate. *Id.* § 3 at 2, citing NYNEX Tariff F.C.C. No. 1, Sections 30.6.1 (G)(2) and 31.6.1 (G)(2). NYNEX would also charge a switched access minutes of use charge if the call is processed over a trunk group which connects the call to the IXC's point of presence (POP). *Id.*

2. NYNEX asserts that it must perform the same amount of work regardless of where the 0- call is routed, and that its existing Operator Passthrough charge is appropriate in all three options available under ZMOP-II. *Id.* § 3 at 1. NYNEX would also apply a nonrecurring service reorganization charge to any IXC changing its destination for 0- calls beginning June 1, 1991. *Id.* § 3 at 2. NYNEX maintains that it has targeted its nonrecurring charge to recover only its costs, so that it expects no incremental revenue from this service. *Id.* § 4 at 1. NYNEX intends to establish different charges in New England and New York. NET proposes to set its service reorganization charge at $158.90 for the first end office and $97.35 for each additional office. NYT plans to charge $180.74 for the first end office and $120.60 for each additional office. *Id.* § 6.

3. According to Allnet Communications Services, Inc. (Allnet), NYNEX's service would constitute an unjust and unreasonable practice because it does not give IXCs the option of having end users instructed to dial 00- to contact the IXC's operator directly rather than routing the call through NYNEX's facilities. Allnet Petition at 1-2. Allnet argues that end users should be informed of the 00- option to enable IXCs to provide their own operator services without relying on NYNEX's facilities. *Id.* at 2. Allnet further maintains that NYNEX's Operator Passthrough charge is unreasonably high for routing calls to a recording, and that these calls should be treated as intercept calls. *Id.* at 2-3. Allnet also claims that NYNEX's demand projections consider only AT&T usage and neglect other IXCs. *Id.* at 3.

4. NYNEX replies that a 00- instruction would inconvenience customers of IXCs that do not provide their own operator services. NYNEX Reply at 2-3. NYNEX also maintains that it is Allnet's responsibility to instruct its customers about 00-dialing. NYNEX interprets Allnet's petition as a request that all 0- calls be routed to a recording. NYNEX argues that 0- calls must first be routed to an operator who can determine what the customer wants before routing the call to the recording. *Id.* at 3-4. It contends that transferring a call to an IXC operator requires the same work as transferring the call to a recording, and that the rates for each should be the same. *Id.* at 4.

5. The Common Carrier Bureau has reviewed the NYNEX transmittal, Allnet's petition, and NYNEX's reply. We conclude that no compelling argument has been presented that the tariff is patently unlawful so as to warrant rejection, and that an investigation is not warranted at this time.

6. Accordingly, IT IS ORDERED that the petition for rejection or suspension and investigation filed by Allnet Communications, Inc., against NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 8, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BellSouth Services Transmittal Nos. 378 and 405
Tariff F.C.C. No. 4

ORDER

Adopted: June 21, 1991; Released: June 21, 1991

By the Chief, Common Carrier Bureau:

1. In its Transmittal No. 378, BellSouth Services (BellSouth) revises its tariff to implement its equal access plans for 1+ interLATA coin sent-paid calls from BellSouth's pay telephones.[1] Specifically, the BellSouth transmittal would clarify existing tariff language, expand presubscription to include BellSouth coin-equipped public telephones, and establish reciprocal audit provisions for 1+ traffic from coin telephones.[2]

2. On April 10, 1991, US Sprint Communications Company Limited Partnership (Sprint) filed a petition for clarification, or in the alternative, suspension and investigation of Transmittal 378. Sprint contends that Transmittal 378 does not fully reflect the payphone equal access plan which BellSouth submitted to the Department of Justice. Sprint Petition at 2. Consequently, Sprint concludes, the tariff is unduly vague and omits key portions of BellSouth's payphone equal access plan. Sprint maintains that if the suggested clarifications are not made, the Commission should suspend and investigate the transmittal. *Id.* at 3.

3. BellSouth replies that the omission of certain items from its tariff filing raises no issue of unlawfulness concerning Transmittal 378, because neither the Communications Act nor the Commission's Rules require inclusion in the tariff of every provision related to a service offering. BellSouth also maintains that the tariff fully apprises the Commission and interexchange carriers of the significant provisions governing the offer of 1+ equal access from public stations. BellSouth Reply at 2-3. Finally, BellSouth contends, even if the tariff were implemented in a manner inconsistent with BellSouth's equal access compliance plan, the remedy for this would lie with the court responsible for enforcing the Modification of Final Judgment [3] and not with the Commission.

4. The Common Carrier Bureau has reviewed BellSouth Transmittal No. 378, as revised, and the associated pleadings. We conclude that no compelling argument has been presented that the tariff is so patently unlawful as to warrant rejection, and that an investigation is not warranted at this time.

5. Accordingly, IT IS ORDERED that the petition to clarify, or alternatively, suspend and investigate BellSouth Services Tariff F.C.C. No. 68, Transmittal No. 378, filed by US Sprint Communications Company Limited Partnership, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] BellSouth says it adopted this plan to respond to an order of the United States District Court for the District of Columbia. On May 8, 1990, that Court ordered the Regional Bell Operating Companies to discontinue default of 1+ interLATA coin sent-paid calls from RBOC payphones to AT&T Communications by May 8, 1991. The RBOCs were also ordered to submit their plans for providing 1+ sent-paid equal access from their payphone stations. *US v. Western Electric Co., Inc.*, 739 F. Supp.1 (D.D.C. 1990).

[2] On June 20, 1991, pursuant to Special Permission No. 91-502, BellSouth filed revisions to Transmittal 378. Transmittal 405 modifies Transmittal 378 to specify that BellSouth will continue to route its 1+ traffic from pay telephones to the existing 1+ carrier until the presubscribed 0+ carrier for the pay telephone involved is capable of accepting 1+ traffic or makes arrangements with another IXC to handle this traffic.

[3] *United States v. American Telephone and Telegraph Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

TAFT BROADCASTING
COMPANY and NORTHERN
NEW ENGLAND TELEVISION
(Transferors)

and File No. BTCCT-900426KG

HERITAGE MEDIA
CORPORATION
(Transferee)

For Transfer of Control
of Station WNNE(TV),
Hartford, Vermont

MEMORANDUM OPINION AND ORDER

Adopted: June 17, 1991 **Released: June 28, 1991**

By the Commission:

1. The Commission has before it for consideration: (a) a petition for reconsideration of our decision in *Taft Broadcasting Company and Northern New England Television*, 5 FCC Rcd 6988 (1990) (*Commission Decision*), filed by Citadel Communications Company, Ltd. (Citadel), licensee of station WVNY-TV, channel 22 (ABC), Burlington, Vermont; (b) an opposition filed by Heritage Media Corporation (Heritage); and (c) related pleadings.[1]

BACKGROUND

2. On November 19, 1990, we granted the application for consent to transfer control of WNNE-TV, Inc., licensee of station WNNE(TV), channel 31 (NBC), Hartford, Vermont, from Taft Broadcasting Company and Northern New England Television (jointly referred to as Taft) to Heritage. The ownership of WNNE(TV) by Heritage would have resulted in the overlap of the predicted Grade B contour of that station with the predicted Grade B contour of commonly owned station WPTZ(TV), channel 5 (NBC), North Pole, New York, in a manner inconsistent with Section 73.3555(a)(3) of the Commission's Rules. However, Heritage proposed to operate WNNE(TV) "primarily as a satellite" of WPTZ(TV) and requested that the application be granted pursuant to the exception for satellite operations set forth in Note 5 to the Commission's multiple ownership rule, Section 73.3555.[2] A petition to deny the satellite proposal was filed by Citadel. Citadel's opposition was based on its contention that Heritage's application failed to demonstrate that WNNE(TV) could not survive as a stand-alone operation and challenged WNNE(TV)'s financial showing in support of its satellite request. Specifically, Citadel questioned the consideration of debt service in analyzing WNNE(TV)'s financial performance. In denying Citadel's petition, we found that grant of the satellite authorization in Hartford was consistent with the purpose of our satellite policy and would serve the public interest. We noted that the overlap area between the parent and the proposed satellite was relatively small and clearly within the range previously approved for satellite operations (5.6% of the area and 8.6% of the parent station population and 9.2% of the area and 12.9% of the satellite station population). Further, we found that the small size of Hartford (population 7,963), the depressed economy, the financial history of WNNE(TV), the lack of viable interested buyers for the station, and the fact that Hartford receives the Grade B signal of only three commercial stations and one operating noncommercial educational station provided ample support for a satellite operation.

THE PLEADINGS

3. In its petition for reconsideration, Citadel maintains that the Commission erred in analyzing WNNE(TV)'s financial performance by considering debt service for the station in evaluating the economic justification for satellite operation. In that regard, Citadel claims that cash flow is universally defined as gross revenues from operations less expenses necessarily incurred in generating those revenues. Such necessary expenses, it avers, do not include debt service (*i.e.*, principal and interest payments, taxes, depreciation, amortization, or corporate overhead) citing *Fair Market Value of Radio Stations: A Buyers Guide*, 90 (NAB 1990). Citadel further asserts that broadcasters generally rely on cash flow in evaluating the financial capability of their stations. Citing *Scripps-Howard Broadcasting Company (KNXV-TV)*, FCC 85-425, released January 10, 1985 (*KNXV-TV*), Citadel states that the Commission has "consistently relied most heavily on a cash flow analysis and [has] thus excluded these expenses (depreciation and bonuses to principals) when considering the current financial position of a broadcast station." Citadel argues that because the amount of debt service borne by a station is dependent on the judgment of the individual owner, and bears no relationship to the capability of a station to generate cash, it must be excluded entirely from any consideration of cash flow in evaluating the economic viability of a station. Heritage's analysis of WNNE(TV)'s financial viability, Citadel contends, included debt service as a necessary expense in calculating the station's cash flow, and therefore, painted an unrealistically gloomy picture of the station's financial status. Citadel maintains that

[1] The deadline for filing an opposition to Citadel's petition for reconsideration was January 4, 1991. On January 4, 1991, Heritage filed a motion for extension of time requesting that the deadline be extended to January 16, 1991. In our discretion, we will grant Heritage's request and accept its pleading filed on January 16, 1991.

[2] A 100-percent satellite station retransmits all of the programming of its parent, while a station categorized as "primarily a satellite" airs most of its parent's programs but originates less than five percent of its programming locally. *See, e.g., Amaturo Group, Inc.*, 68 FCC 2d 899 (1978).

if this analytical mistake is corrected, Heritage's financial statements will show that WNNE(TV) has generated positive cash flow for every fiscal year since 1984.[3]

4. Additionally, Citadel maintains that the Commission's acceptance of, for the first time, a licensee's debt service as relevant to the question of whether a broadcast station can survive as an independent, full-service facility, establishes a dangerous precedent. Using this standard of economic viability, it contends, the most profitable station in the country could be shown to be in distress. By considering debt service in its profitability analysis, Citadel argues that the Commission is penalizing the public interest for Taft's bad business judgment. In this regard, Citadel states, it appears Taft has overleveraged WNNE(TV), a mistake that says nothing about WNNE(TV)'s ability to operate with a positive operating income as an independent, full-service station.

5. Further, Citadel claims that by dismissing its arguments regarding WNNE(TV)'s cash flow on the grounds that it provided no evidence to refute the legitimacy of the management and debt service expenses, the Commission has improperly shifted the burden to Citadel to disprove the legitimacy of WNNE(TV)'s debt service expenses. In this regard, it asserts that Commission precedent makes clear that the applicant bears the burden of proving that satellite status is justified. *See Meredith Corporation*, 5 FCC Rcd 7015 (1990). Without access to internal loan documentation, Citadel states that it has no way to prove its claim regarding the legitimacy of Taft's debt service expenses. It maintains that the courts have repeated the proposition that where the facts with regard to an issue are peculiarly within the knowledge of a party, that party has the burden of proving the issue. *See, e.g., Campbell v. United States*, 365 U.S. 85, 96 (1961).

6. Citadel also avers that, even if WNNE(TV)'s debt service and management expenses are legitimate, they are irrelevant to the question of the station's stand-alone viability. The fundamental purpose of the Commission's satellite policy, it asserts, is to permit operation of stations that would not otherwise be economically viable. Citadel maintains that while the Commission may consider a variety of factors when reviewing satellite requests, the threshold question is whether the community is able to support a full-service station.

7. In opposition, Heritage argues that the petition for reconsideration should be dismissed because it revisits issues already addressed by the Commission. It maintains that, by basing its argument upon one aspect of the economic health of WNNE(TV), Citadel misapprehends the standard for justifying a satellite operation, misstates the law regarding the economic justification for such stations, and mischaracterizes the financial condition of WNNE(TV).

DISCUSSION

8. As noted in our previous decision, in evaluating requests for satellite operation we balance a number of factors, including the degree of overlap between the stations, the capacity of the market to support a full-service station, the level of service available in the market, the financial difficulties of the stations involved, as well as other considerations. *See Television Satellite Stations - Review of Policy and Rules*, 5 FCC Rcd 5567 (1990). Our decision to permit satellite operation in Hartford was based on the balancing of a number of these factors and was not based upon the financial condition of WNNE(TV) alone. We have carefully reviewed our decision and the petition for reconsideration and conclude that Citadel has submitted no new information or demonstrated any errors which warrant the reversal of our earlier decision.

9. We turn first to Citadel's contention that the Commission improperly shifted the burden of proving that satellite status was justified to the petitioner. We disagree. In all satellite cases, the applicant is required to submit a showing to support the exception to the multiple ownership rules. In challenging transfer applications, pursuant to Section 309(d) of the Communications Act of 1934, as amended, a petitioner must, as a threshold matter, submit specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest. *See Astroline Communications Co. v. FCC*, 857 F. 2d 1556 (D.C. Cir. 1988). After careful review of the application and pleadings, we found that Citadel's pleadings had failed to raise a substantial and material question of fact that would require a hearing. We also found, based on the information before us, that a sufficient showing had been made by Heritage to justify a satellite operation in Hartford. In the subject petition, Citadel's pleadings again fail to raise a substantial and material question of fact requiring a hearing. Citadel merely recites its previous argument that debt service expenses should be excluded when determining broadcast cash flow. As noted below, we disagree with the petitioner's position as to the proper scope of this factor in satellite cases, and it provides no additional information to refute the applicability of other factors supportive of satellite operation.

10. We are persuaded that the nature of the market and the overall financial condition of WNNE(TV), as established by Heritage and unrebutted by Citadel, are supportive factors, among others, for satellite operation.[4] Specifically, Hartford receives the Grade B signal of only three commercial stations; the community of Hartford has a population of only 7,963 persons; and the overlap involved is not substantial. Arbitron includes Hartford, Vermont, within the Burlington-Plattsburgh market, ranked 92nd. Hartford, however, is separated from Burlington by more than 70 miles and rough terrain. We have previously authorized satellites in small communities at the periphery of a market, *see, e.g., Pete J. Stathaas*, 59 RR 2d 169 (1985), *recon. denied*, 60 RR 2d 1293 (1986); and

[3] Citadel asserts that a party seeking satellite waiver has generally been required to produce an economic study demonstrating that the market would not support a full-service station. Nevertheless, it states, Heritage has chosen to rely primarily upon WNNE(TV)'s financial statements to show that the station is not economically viable.

[4] Information provided by Taft for the year ending September 30, 1989, the last full year for which figures are available, show revenues of $2,313,000, cost of sales and operational expenses of $1,878,000, interest expenses of $490,000, and management expenses of $160,000, for an operating cash deficit of $215,000.

Horseshoe Bay Centex Broadcasting Co., 5 FCC Rcd 7125 (1990), in recognition of the difficulties in supporting full-service stations in such communities. Additionally, Citadel has not refuted the assertions by Heritage that the Hartford area is currently undergoing a recession and experiencing a record number of bankruptcies by area businesses. Finally, television stations in the market have experienced decreased revenues, with several having gone off the air. Heritage has clearly demonstrated that Hartford is the type of community the Commission intended to be served by our satellite policy.

11. We turn now to the financial condition of WNNE(TV). The proposal here is distinguishable from *KNXV-TV*, noted above. In *KNXV-TV*, the applicant included noncash expenses (*i.e.*, depreciation) and non-recurring expenses (*i.e.*, bonus payments to principals) in its consideration of the station's financial position. Because these were noncash expenses, the Commission stated that the applicant did not present an accurate picture of the station's cash flow position. *See KNXV-TV*, above. Here, Heritage has not included such expenses. The expenses noted by Heritage included interest on outstanding debt and management expenses. We must consider these expenses in our overall review of the station's financial condition because they are cash expenditures and must be paid if the station is to remain operational.[5] We agree with Citadel's position that clearly excessive debt expenses might be relevant in some satellite cases where the seller is asserting its poor financial condition. Citadel's assertion that WNNE(TV)'s financial difficulties are a result of poor management decisions in accumulating excessive debt when the station was acquired is conclusory and unsupported. Moreover, as a general matter, the balance between debt or equity financing, or the cost of debt, are matters we leave to the business judgment of licensees. *MMM Holdings, Inc.*, 4 FCC Rcd 8243, 8245 (1989). There is nothing in the material submitted by the applicant or the petitioner to suggest that these and associated expenses are unreasonable.[6] Accordingly, we reject Citadel's contention upon review of all relevant factors.

12. In view of the foregoing, we find that Citadel has failed to demonstrate that the Commission erred in granting the subject assignment application pursuant to the satellite exception in Note 5 of Section 73.3555 of the Commission's Rules. Accordingly, IT IS ORDERED, That the action of the Commission, granting Heritage's acquisition of WNNE(TV) and the requested exception to the multiple ownership rules, IS AFFIRMED, and Citadel's petition for reconsideration IS DENIED.

13. IT IS FURTHER ORDERED, That copies of this Memorandum Opinion and Order shall be sent Certified Mail-Return Receipt Requested to the parties to this proceeding by the Mass Media Bureau.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[5] As noted in the *Commission Decision*, the applicant had taken steps to cut costs (*e.g.*, reducing the staff from forty-five to thirty) and to increase profitability.

[6] We are not prepared to state that management expenses of $160,000 (6.9 percent of revenues) and interest expenses of $490,000 (21.2 percent of revenues) are on their face unreasonable.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-298

In the Matter of

Amendment of Section 73.202(b), RM-5754
Table of Allotments,
FM Broadcast Stations.
(Garden City, Indiana)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: June 14, 1991; Released: June 28, 1991

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it a Petition for Reconsideration filed by Mid-State Media, Inc. ("Mid-State"), licensee of Station WWWY, Columbus, Indiana. Mid-State requests reconsideration of our action allotting Channel 275A to Garden City, Indiana.[1] Martin Hensley ("Hensley"), the original proponent of the allotment to Garden City, filed an opposition to Mid-State's petition, asserting that the grant was proper. Mid-State filed a reply[2] to Hensley's opposition and, subsequently, Hensley filed a response to Mid-State's reply. Thereafter, Mid-State filed a Motion to Strike Hensley's response.[3]

2. In its petition, Mid-State claims that the area to which the Garden City allotment was made is not a "community" for allotment purposes. Mid-State notes that Garden City is not incorporated or recognized by the U.S. Census as a Census Designated Place. Mid-State argues that in such cases, it is incumbent upon the proponent of the original allotment to provide the Commission with proof, during the allotment proceeding, that the area in question falls within the Commission's guidelines for defining "community" for allotment purposes. Mid-State concedes that neither incorporation nor listing in the U.S. Census is dispositive in determining whether an area qualifies as a community, but asserts that Garden City does not enjoy any other indicia of community which might bring it within Commission guidelines.[4]

3. Mid-State provided the Commission with several exhibits purporting to demonstrate that Garden City, although admittedly a geographical location, does not qualify as a "community." These exhibits include copies from the relevant pages from the 1980 U.S. Census Report, in which no mention of Garden City is made, and excerpts from the Columbus 1988-1989 Yellow/White Pages, which show no reference to Garden City.

4. To further establish that Garden City has no recognized indicia of community status, Mid-State submitted a copy of the "State List of Post Offices for Indiana" in which no mention of Garden City is made and copies of its unsuccessful NEXIS and LEXIS search attempts to locate references to Garden City, Indiana. Mid-State also demonstrated that Garden City is not listed in the Index of, or depicted on any map in, the Rand McNally *1987 Road Atlas*, nor is it depicted on the maps of Indiana published by National Geographic in *Funk & Wagnalls New Encyclopedia (1986)*, or in the Reader's Digest *Atlas of the World*. Mid-State acknowledges that, in the Rand McNally *1987 Commercial Atlas & Marketing Guide*, the area is accredited with having a population of 100 whose mail is delivered through Columbus.

5. Mid-State claims that Garden City is actually an area which is surrounded by, adjacent to, and partially included in the incorporated boundaries of a large city to its north and west called Columbus, Indiana, which is located within Bartholomew County. To support this claim, Mid-State provides a copy of the official Road Map of Bartholomew County on which the name "Garden City" appears in a borderless space to the south and east of Columbus. The map also shows that the incorporated area of Columbus extends from the main city proper, which lies to the north of "Garden City," includes a road called Route 31A, which runs along the west side of "Garden City," and then extends to an area southwest of "Garden City" which includes a junior high school and an industrial park.

6. Based on the foregoing evidence, Mid-State asserts that Garden City is not a community for allotment purposes. Mid-State concludes that, because Garden City is not incorporated or listed in the Census and lacks other indicia, the allotment of Channel 275A to Garden City was error.

7. In his opposition, Hensley first states that Mid-State's comments and allegations should have been filed during the comment period for the Garden City allotment proceeding. Hensley goes on to say that, because no opposing comments were received during the comment period of the allotment proceeding, he had no reason to defend the appropriateness of his choice of location at that time.

8. In addition, Hensley accuses Mid-State of making several errors in its petition. He contends that the road which Mid-State refers to as route 31A is really called State Road 11, and the school which Mid-State calls South Side Junior High School is really South Side Middle School. Hensley stresses that this demonstrates a lack of

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[1] *Report and Order*, 3 FCC Rcd 3069 (1988).

[2] In this document, petitioner makes reference to a second set of opposition comments allegedly filed by Hensley three days after the first set. However, the Commission has no record of having received this second set of opposition comments.

[3] Mid-State simultaneously filed a petition for stay in which it asked the Commission to delay opening the filing window during which applications for a license to operate on Channel 275A will be granted until the issues raised in the petition for reconsideration are resolved. Mid-State's petition for stay was granted by an *Order Granting Petition for Stay*, 53 FR 29056 (August 2, 1988).

[4] Such indicia, according to Mid-State, include local business or civic associations which specifically identify with the community, a Chamber of Commerce, local police or fire departments, locally controlled schools, or the local provision of services such as electricity, gas or water.

knowledge of the Garden City area and thus discredits Mid-State's other assertions. In addition, Hensley claims that excerpts from the White and Yellow Pages selected by Mid-State do not include key pages listing several Garden City businesses, such as the Hacienda Lounge and Mussilami's Drive-In.

9. Hensley states that, since Mid-State, by its own admission, serves the same area that would be served by the new allotment, its present allegations are financially self-serving and not based on a genuine interest in assuring Hensley's compliance with the Commission's Rules. He then contends (without supporting evidence) that Garden City does qualify as a political subdivision of Bartholomew County and states that "the adoption of this Rule Making by the Commission and the designation of the filing window indicates Garden City has met the Commission's classification as a community." He concludes by offering to apply for "the dual identity of Garden City-Columbus" when he files his application for the newly allotted channel. Hensley states that he makes this offer "in the spirit of cooperation" but without "embracing Mid-State's allegations."

10. Along with its reply, Mid-State submitted a letter written by the Director of the Columbus/Bartholomew Planning Department which states that Garden City is an unincorporated and unplatted area which has no governing body and is not a political subdivision. The Director also states that in "1971, the city annexed the property occupied by the Hacienda Lounge. Also, in 1971, the City of Columbus Plan Commission extended its comprehensive planning and zoning authority to ... all of Garden City along with other property to the south. *In assuming this jurisdiction, the plan commission made a finding that the area is within the growth area of the City of Columbus....Further annexations in the Garden City area are under consideration.*" [emphasis added]

11. Mid-State further refutes Hensley's claims by providing photographs of road signs along the main road through Garden City which read "31A," and by providing a letter from the Bartholomew Superintendent of Schools countering Hensley's assertion that the school to the west of Garden City is now a middle school. The Superintendent states that the school was once a high school (and is still shown as one on some maps, such as the Bartholomew County Road Map), but that it is now an elementary school and "at no time was the facility operated as a middle school."

12. Finally, Mid-State asserts, in the same reply, that Hensley's offer to apply for the dual identity of Garden City-Columbus must be rejected due to the fact that Garden City is not a "community" to which a station may be allotted, and that Columbus is not in need of a new radio station. Mid-State reiterates that Hensley did not demonstrate that Garden City possesses adequate indicia of a community for allotment purposes. Instead of being a "community", Mid-State claims that Garden City is an undefined area surrounded by the city of Columbus, that parts of Garden City already have been incorporated into the city limits of Columbus, and that additional lands most likely will be annexed to Columbus in the near future. Mid-State concludes by restating its belief that the allotment of Channel 275A was made to Garden City in error, based on an incomplete record.[5]

DISCUSSION

13. Hensley's procedural defense to Mid-State's charges must fail. Although Mid-State should have raised its concerns during the initial allotment proceeding, Section 1.429(b)(3) of the Commission's Rules provides that petitions for reconsideration which rely on previously undisclosed facts will be granted when the Commission determines that "consideration of the facts relied on is required in the public interest." 47 C.F.R. §1.429(b)(3). Grounds for reconsideration often are present when there exists the possibility of manifest error, or of omissions so material that their correction would result in substantial alteration of the original decision.[6] In this case, information indicating that Garden City is neither incorporated nor mentioned in the U.S. Census was omitted from the original petition for rule making, and that circumstance was not considered in the allotment decision. Because it now appears that the Commission based its decision on incomplete or erroneous information, and because the public interest is likely to be adversely affected by a decision so based, we will consider the issues presented by Mid-State in its petition for reconsideration.

14. Hensley's argument that he had no obligation to present the Commission with information on the community status of Garden City during the allotment proceeding because its status was not challenged is unavailing. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allocate channels "... among the several States and communities." Communities, for allotment purposes, have been defined as geographically identifiable population groupings with common local interests.[7] As a general rule, if a community is incorporated or listed in the U.S. Census, that is sufficient ground upon which to base a favorable determination of community status.[8] Yet, as stated in *Fort Mohave, AZ*, "[i]n the absence of such factors, the petitioner must present the Commission with sufficient in-

[5] At this point in the pleadings, Hensley submitted a response to Mid-State's reply comments, in which he again denied the charges but suggested, again "in the spirit of cooperation," that the Commission delete the allotment of Channel 275A to Garden City and allot it instead to Columbus, since that city clearly met the Commission's standards. Mid-State filed a Motion to Strike this pleading which will be granted pursuant to Section 1.429 of the Commission's Rules. This Section limits pleadings filed in response to petitions for reconsideration to oppositions and replies to oppositions. *See* 47 C.F.R. §1.429. In any event, we note that, in accordance with Section 1.401 of the Commission's Rules, a request to allot Channel 275A to Columbus now must be initiated in a new petition for rule making at some later date (along with supporting documentation) before it can be addressed. *See* 47 C.F.R. §1.401.

[6] *See W.W.I.Z., Inc., Lorain, OH*, 37 FCC 685, 686 (1964).

[7] *See North Naples, FL*, 42 FR 63887, (Broadcast Bureau, adopted December 6, 1977); *Fort Mohave, AZ*, 3 FCC Rcd 6725 (Policy and Rules Division 1988); *Coker, AL*, 43 R.R. 2d 190, 193 (Broadcast Bureau 1978), and cases cited therein.

[8] *See Fort Mohave, AZ*, 3 FCC Rcd 6725 (Policy and Rules Division 1988); *Mercer Broadcasting Co.*, 22 F.C.C. 1009 (1957); *Musical Heights, Inc.*, 29 F.C.C. 1 (1960); *Holston Broadcasting Corp.*, 1 R.R. 2d 982 (Review Board 1964); and *Hymen Lake*, 46 F.C.C. 2d 560 (Review Board 1974).

formation to demonstrate that such a place has social, economic or cultural indicia to qualify it as a 'community' for allotments purposes."[9]

15. The Commission does not routinely entertain a proposed channel deletion absent a compelling showing of need or Commission error. However, we find that Mid-State has presented sufficient information in its petition to warrant a reassessment of the prior outcome in this case. In *East Hemet and Indio, CA,*[10] the Commission considered the deletion of Channel 225A, which had been allotted to East Hemet in a prior proceeding, when it received information that brought into question the community status of that area. Even though, "[n]o issue was raised at the time [of the initial proceeding] concerning the status of East Hemet as a community for allotment purposes," the Chief of the Allocations Branch stated that if "it is determined East Hemet does not qualify as a 'community,' the allotment of a channel there was in error."

16. After a review of the facts and arguments presented by both parties, we conclude that Hensley has failed to satisfy his obligation to provide the Commission with evidence that "Garden City", an area which is neither incorporated nor listed as a U.S. Designated Area, enjoys other indicia of community sufficient to reach a determination that it is a "community" for allotment purposes.

17. Of particular importance in arriving at this decision is the letter written by the Director of the Planning Department stating that, since 1971, the Garden City area has been under the authority of the Columbus Plan Commission. The letter further states that the Hacienda Lounge, one of the business establishments Hensley claims for Garden City, occupies property which was annexed by the City of Columbus. Moreover, the City of Columbus Plan Commission's finding that Garden City is "within the growth area of the City of Columbus" and "[f]urther annexations in the Garden City area are under consideration" removes any possibility of considering Garden City as a separate community or subdivision.[11] In addition, the official map of Bartholomew County shows that the City of Columbus' incorporated boundaries almost completely enclose the undefined area marked "Garden City."

18. The case at hand is analogous to the case of *Penacook, NH,* [12] in which a channel was denied to an unincorporated area which was not listed in the Census. The allotment was denied because opponents demonstrated that the area was, in fact, a mere neighborhood which traversed the incorporated boundaries of two adjacent cities. In the instant case, although Garden City is not entirely within the incorporated boundaries of Columbus, it is evident from the Official Bartholomew Road Map and from the testimony of the Director of the Columbus/Bartholomew Planning Department that Garden City is an area whose identity is inextricably tied to that of the metropolis. As Mid-State has demonstrated, Garden City is adjacent to, partially surrounded by, and fast becoming a part of the City of Columbus.[13]

19. Hensley's attempts to show that Garden City does qualify as a political subdivision of Bartholomew County are unpersuasive. He informs us that "[t]he residents of Garden City appear in the U.S. Census listing for Bartholomew County" and that the "Columbus City Police and the Bartholomew County Sheriff provide law enforcement protection for Garden City." However, rather than furthering his case, these facts simply reaffirm that Garden City is indistinguishable as a *separate* political subdivision within the county. Hensley is similar to the petitioner in *Coker, AL,* who

> failed on this account to inform us as to any services that are specifically designed to respond to the needs of Coker residents....[I]n this case we have no facts that have been substantiated and upon which we could conclude that a particular service or organization responds to a community need. Therefore, we are unable to conclude on the basis of the information provided that Coker qualifies as a community under the Commission's criteria. *See North Naples, Florida,* 42 FR 63887, Docket 20935, adopted December 6, 1977.[14]

20. Hensley's attempt to rebuff Mid-State's petition by asserting that Mid-State has made several errors is unsuccessful, and in fact, in some cases, demonstrates Hensley's knowledge to be no better than Mid-State's. Regarding the school, Mid-State submitted a letter from the Superintendent stating that the school in question was changed to an elementary school, not a middle school as Hensley asserts. In addition, although Hensley states that State Road 11 is the proper name for what Mid-State calls Route 31, Mid-State submitted a copy of the Official Bartholomew County Map and photographs of road signs, all showing that "31A" is an acceptable name for the thoroughfare running by Garden City. In sum, the body of evidence offered by Mid-State to refute Hensley's assertions, both in its petition and in its reply, is quite persuasive.

21. Hensley's attempt to convince us that our prior decision to allot Channel 275A to Garden City and the subsequent designation of a filing window provide further indicia of community also ill serves his purposes. As stated above, Section 307(b) of the Communications Act, as amended, provides that channels shall be distributed fairly among the various communities. This necessarily

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[9] *Fort Mohave, AZ,* 3 FCC Rcd 2004 (Policy and Rules Division 1988); *see also, Red Rock, GA,* 48 FR 36170 (Policy and Rules Division, August 9, 1983); *Cascade Village, CO,* 48 FR 19917 (Policy and Rules Division, May 3, 1983); *Ansley, AL,* 46 FR 58688, (Policy and Rules Division, December 3, 1981); *Coker, AL,* 43 R. R. 2d 190, 193 (Broadcast Bureau 1978), and cases cited therein.

[10] *East Hemet and Indio, CA,* 3 FCC Rcd 823 (Allocations Branch 1988).

[11] *See, Yorktown, VA,* 38 FR 6695 (March 12, 1973).

[12] *Penacook, NH,* 2 FCC Rcd 459 (Policy and Rules Division 1987).

[13] This situation gives rise to an ancillary problem. Where official boundaries are lacking there is no assurance that the requirements of Section 73.315 of the Commission's Rules with respect to coverage of the proposed service area can be met. In order to determine whether a station operated from a particular site can provide coverage to the entire community, the confines of this area must be known. *See North Naples, FL, supra; Red Rock, GA, supra,* and cases cited therein.

[14] *Coker, AL, supra.*

requires that a community for allotment purposes be in existence prior to the grant of the allotment.[15] One cannot argue that the Commission's inappropriate grant of a channel can be used later as qualifying indicia of the existence of a community when a question of error arises after the allotment has been made.

22. Hensley also complains that, because Mid-State waited until the Commission already had allotted Channel 275A to Garden City and had authorized the opening of the applications window, he stands to lose funds spent preparing to apply from the new channel. However, this complaint regarding his financial loss is unavailing. Had Hensley paid filing fees to the Commission and the allotment of Channel 275A to Garden City been subsequently deleted by rule making, he might be entitled to a refund pursuant to Section 1.1111(a)(4) of the Commission's Rules. 47 C.F.R. §1.1111(a)(4). Furthermore, as previously stated, had Hensley revealed during the rule making proceeding the fact that Garden City is neither incorporated nor listed by the Census as a Census Designated Area the Commission would have requested evidence of community status for allotment purposes at that time.[16] Thus, if there is a delay at this point in time, it is, at least in part, one of Hensley's own making.[17]

23. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 12, 1991,** the Table of FM Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below:

Community	Channel No.
Garden City, Indiana	---

24. IT IS FURTHER ORDERED, That the Mid-State's petition for reconsideration requesting the Commission to delete Channel 275A from Garden City, Indiana, IS GRANTED.

25. IT IS FURTHER ORDERED, That Mid-State's Motion to Strike Hensley's unauthorized response to its reply IS GRANTED.

26. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

27. For further information concerning this proceeding, contact Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz, Deputy Chief
Policy and Rules Division
Mass Media Bureau

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[15] *See* 47 U.S.C. §307(b) and 47 C.F.R. §73.1120.

[16] It is in the petitioner's best interest to present the Commission with supporting evidence at the outset of the rule making process, especially in cases where, as here, the area in question is neither incorporated nor recognized by the U.S. Census. Timely disclosure ensures that this revelant issue will be considered in the deliberations before an allotment is made.

[17] In addition, Hensley argues that Mid-State's concerns are insincere due to its financial interest in the outcome of the case. We note, however, that the fact that Mid-State has a financial interest in the outcome does not negate its ability to raise with the Commission issues of omission of facts or manifest error.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-585

In the Matter of

Amendment of Section 73.202(b),	RM-7338
Table of Allotments,	RM-7663
FM Broadcast Stations.	
(North Fort Riley[1]	
and St. Marys, Kansas)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 18, 1991; Released: June 28, 1991

By the Chief, Allocations Branch:

1. At the request of Sunrise Broadcasting Corp. ("Sunrise") the Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 7108 (1990), proposing the allotment of FM Channel 275C2 to St. Marys, Kansas, as that community's first local broadcast service. Sunrise filed comments restating its interest in a channel at St. Marys. Anita Kay Cochran ("Cochran") filed a petition for rule making which has been accepted as a counterproposal in this proceeding.[2] Sunrise and Cochran filed reply comments.[3]

2. Cochran, permittee of Station KXDJ, Channel 273C2, North Fort Riley, Kansas, proposed the substitution of Channel 273C1 for Channel 273C2 and modification of her permit to specify the higher class channel.[4] According to Cochran, adoption of her proposal will provide for substantially greater coverage by the station and will thus better serve the public interest.

3. Cochran, in reply comments, proposes to eliminate the conflict between St. Marys and North Fort Riley by using her construction permit site (38-57-05 and 96-47-45) instead of the site specified in her rule making proposal (39-00-00 and 96-20-00). Cochran points out that the allotment of Channel 273C1 to North Fort Riley at the site specified in her construction permit would be fully spaced to the allotment of Channel 275C2 at St. Marys. She indicates that she will promptly file an application for Channel 273C1 at North Fort Riley. Cochran requests adoption of her proposal as it would provide for the most effective use of Channels 273C1 and 275C2.

4. Sunrise, in its reply comments, continues to support the allotment of Channel 275C2 at St. Marys as that community's first local service. Sunrise points out, however, that the two proposed allotments do not need to be mutually exclusive and that grant of both allotment proposals provides the greatest audience gain and public interest benefit. Sunrise provides an engineering analysis showing that Channel 275C2 can be allotted to St. Marys as a first local service while Channel 273C1 can be allotted to North Fort Riley with a site restriction. According to Sunrise, the allotment of both channels will provide a St. Marys/North Fort Riley audience gain of 291,563 persons, while there would be a 260,172 person gain if only the St. Marys upgrade was authorized and a gain of 224,577 persons if only the North Fort Riley proposal prevailed.

5. We believe the public interest would be served by allotting Channel 275C2 to St. Marys, Kansas, as that community's first local broadcast service. We also find that the public interest would be served by the substitution of Channel 273C1 for Channel 273C2 at North Fort Riley, Kansas, and modification of the construction permit for Station KXDJ, Channel 273C2, to specify operation on Channel 273C1. Channel 275C2 can be allotted to St. Marys, Kansas, in compliance with the minimum distance separation requirements with a site restriction 24.3 kilometers (15 miles) east of the community.[5] The site restriction will prevent conflicts with Station KHUT, Channel 275C1, Hutchinson, Kansas, Station KNDY-FM, Channel 276C3, Marysville, Kansas, and Station KQLA, Channel 278C2, Ogden, Kansas. Channel 273C1 can be allotted to North Fort Riley, Kansas, in compliance with the Commission's minimum distance separation requirements at the site specified in Cochran's construction permit for Channel 273C2.[6] In accordance with Section 1.420(g) of the Commission's Rules, we shall modify the construction permit (BPH-870710NE) for Station KXDJ to specify operation on Channel 273C1.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 12, 1991,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

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[1] The community of North Fort Riley, Kansas, has been added to the caption.

[2] Public notice of the counterproposal was given on March 6, 1991, Report No. 1839 (RM-7663).

[3] Sunrise Broadcasting's reply comments were received after the cut-off dates established in this proceeding but were accompanied by a motion to accept. Ordinarily in a contested proceeding, late filed comments would not be accepted. However, in this instance, a site is available for the channel at North Fort Riley that removes the conflict with the channel at St. Marys, thereby allowing us to accommodate both parties. Therefore, we shall accept the late filed comments. The comments filed by Cochran on May 17, 1991, and Sunrise on May 22, 1991, are moot in view of the decision in this proceeding.

[4] An assignment of the construction permit for Channel 273C2, North Fort Riley, from Anita Kay Cochran to Lesso, Inc., was granted on May 9, 1991 (BAPH-910128GL). Lawrence E. Steckline, President of Lesso, Inc., has indicated his intent to file an application for Channel 273C1, if allotted.

[5] The coordinates for Channel 275C2 at St. Marys are 39-05-47 and 95-48-55.

[6] The coordinates for Channel 273C1 at North Fort Riley are 38-57-05 and 96-47-45.

Community	Channel No.
North Fort Riley, Kansas	273C1
St. Marys, Kansas	275C2

7. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit of Anita Kay Cochran for Station KXDJ, Channel 273C2, North Fort Riley, Kansas, IS MODIFIED to specify operation on Channel 273C1, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

8. The window period for filing applications for Channel 275C2 at St. Marys, Kansas, will open on **August 13, 1991,** and close on **September 12, 1991.**

9. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND BY CERTIFIED MAIL, Return Receipt Requested, a copy of this Order to the following:

Lesso, Inc.

154 North Emporia

Wichita, Kansas 67202

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-547

In the Matter of

Amendment of Section 73.202(b),	RM-6899
Table of Allotments,	RM-7021
FM Broadcast Stations.	RM-7100
(Hannahs Mill, Milledgeville)	RM-7102
and Perry, Georgia)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 17, 1991; Released: June 28, 1991

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 8454 (1989), issued in response to three separate petitions for rule making. The first petition, filed by Sam V. Stacy, Jr. ("Stacy") seeks the allotment of Channel 264A (RM-6899), and the second petition, filed by Dewitt Coleman ("Coleman"), requests the allotment of Channel 266A (RM-7100), to Hannahs Mill, Georgia, as that community's first local service. The third petition, filed by Radio Perry, Inc. ("Perry"), licensee of Station WPGA(FM), Channel 265A, Perry, Georgia, seeks the substitution of Channel 265C3 for Channel 265A at Perry and modification of its license to specify the higher class channel (RM-7021). Lowell L. Register, President of Station WPGA(FM), subsequently withdrew his proposal.[2] Preston W. Small ("Small"), permittee of Channel 264A at Milledgeville, Georgia, filed a petition requesting the substitution of Channel 264C3 for Channel 264A at Milledgeville, Georgia, and modification of his construction permit for Station WLRR(FM) (BPH-860203MT) (RM-7102). Small's counterproposal is mutually exclusive with the proposed allotment of Channel 264A to Hannahs Mill, Georgia. We have treated Small's petition as a counterproposal in this proceeding.[3,4]

2. In response to the *Notice* Hannahs Mill Broadcasting Company ("Hannahs") and Coleman filed supporting comments. Stacy, Coleman and Perry filed reply comments, as did Claude D. Thames ("Thames"), licensee of Station WSFT(AM), Thomaston, Georgia,[5] David L. Piper ("Piper"), President, Radio Georgia, Inc., licensee of Station WTGA(FM), Channel 237A, Thomaston, Georgia, and Emerald Broadcasting of the South, Inc. ("Emerald"), licensee of Station WHMA(FM), Anniston, Alabama. Coleman and Small filed comments in response to the counterproposal.

3. Hannah in its comments supports the allotment of either Channel 264A or Channel 266A to Hannahs Mill, and states its intention to apply for either channel, if allotted. In addition, Hannahs states that Hannahs Mill is located in west central Georgia and has a population of 2,616.

4. Coleman in his comments states that according to the 1980 U.S. Census, Hannahs Mill has a population of 2,616 persons. Coleman claims that Channel 266A would be superior to the allotment of Channel 264A, because the use of existing tower sites are available for use on Channel 266A. Coleman states in reply comments that since the use of Channel 264A at Hannahs Mill is mutually exclusive with Small's counterproposal to substitute Channel 264C3 for Channel 264A at Milledgeville, the allotment of Channel 266A at Hannahs Mill is even more preferable. Coleman states that the allotment of Channel 266A will enable Hannahs Mill to serve more people within the 1.0 mV/m contour.

5. Stacy, in reply comments, supports the allotment of Channel 264A to Hannahs Mill with a site restriction 4.5 miles southeast of the community. He asserts that this tower site would be more economically viable because it would provide an increased service area to locations that do not have full-time service. Stacy also claims that enhanced service would be provided to Barnesville, Zebulon, Molena, Culloden, The Rock, and Woodbury, Georgia, if Channel 264A is allotted to Hannahs Mill.

6. Piper, in reply comments, contends that Hannahs Mill is not a recognized community. He asserts that Hannahs Mill is a "rural road" and not a community. Piper asserts that according to the official map of Upson County Commissioners of 1989, Hannahs Mill is more than 50% enclosed with the urban area boundary of the city of Thomaston, Georgia. He argues that Grant Airport is centrally located in the Hannahs Mill area, and the city of Thomaston Police and Fire Department are responsible for the airport. Piper states that Hannahs Mill functions as a part of Thomaston since it has no economic base of its own. He also states that the transmitter sites for either Channel 264A or Channel 266A would be close to all existing transmitter sites or stations licensed to Thomaston. Piper states that he has lived in Upson County for over 35 years, and has been a broadcaster and news reporter for 20 years, and has never heard anyone refer to Hannahs Mill as a community. Piper also submits a statement from the sheriff of Upson County, who has been a

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[1] The community of Milledgeville, Georgia, has been added to the caption.

[2] Therefore, his comments and any comments in response to RM-7021 will not be considered.

[3] Public Notice of Preston W. Small's counterproposal was given on February 27, 1990, Report No. 1808, (RM-7102).

[4] Small filed additional pleadings as well. First, he filed a request that his proposal be treated pursuant to the Commission's minimum distance separation requirements in effect before October 2, 1989. Because Small's proposal was filed prior to that date, it has been considered pursuant to the minimum distance separation requirements as of that date. Small also filed a counterproposal to change the community of license for Station WLRR(FM) from Milledgeville to Covington, Georgia, and to substitute Channel 264C3 for Channel 264A at Covington. He subsequently withdrew this proposal. Any comments relating to this proposal, therefore, will not be considered.

[5] Thames' reply comments were timely filed, but they did not contain a certificate of service indicating service to the other parties. Therefore, the comments have not been accepted. See Section 1.420(c) of the Commission's Rules and the *Appendix* to the *Notice of Proposed Rule Making* in this proceeding.

resident of the area for the past 18 years, attesting that Hannahs Mill has never been referred to as a community. Piper states that Hannahs Mill has no government, no appointed officials, no civic or economic function as a community, no police, fire department, school, post office, and no commercial or cultural center. Piper states that the only buildings of note on Hannahs Mill Road are the New Hope Baptist Church, the Kountry Corner Grocery and the old Hannahs Mill. Piper contends that Hannahs Mill functions as part of Thomaston, Georgia.

7. Emerald in its reply comments states that it has filed a counterproposal in MM Docket 89-585, proposing the downgrading of Channel 263C, Anniston, Alabama, to Channel 263C1, the reallotment of Channel 263C1 from Anniston to Sandy Springs, Georgia, the modification of the license for Station WHMA-FM, Channel 263C, Anniston, to specify the new channel and community, the allotment of Channel 261C3 to Anniston, and the allotment of Channel 264A to Lineville, Alabama. He asserts that Coleman and Small's proposals are superior to Stacy's proposal, as adoption of Stacy's proposal would be mutually exclusive with Coleman's proposal and the allotment of Channel 264A to Lineville, Alabama, as proposed by Emerald.

8. In response to the counterproposal, Coleman restates the fact that the proposal to substitute Channel 264C3 for Channel 264A at Milledgeville is mutually exclusive to the proposed allotment of Channel 264A, but is compatible with his proposal to allot Channel 266A to Hannahs Mill. Coleman also notes that the allotment of Channel 266A is consistent with Emerald's counterpropopsal. In reference to the community issue, Coleman contends that because the issue was not previously raised, the Hannahs Mill proponents have been afforded no opportunity to respond to such claims. However, Coleman notes that Hannahs Mill is a Census Designated Place ("CDP") with a 1980 population of 2,616, and states that there is, therefore, a strong presumption that Hannahs Mill is a community.

9. Based on the information before us, we believe that Hannahs Mill is a community for allotment purposes. Hannahs Mill is listed as a CDP in the 1980 U.S. Census, and it is also listed in the 1988 Rand McNally Commercial Atlas as a separate community, although it shares a zip code with Thomaston, Georgia. There is a strong presumption that a CDP is a community for allotment purposes. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Although Piper indicates that Hannahs Mill relies on the nearby community of Thomaston for many of its local services, the Commission has stated that a municipality need not provide every public service on its own in order to merit community status. *See Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments (Semora, North Carolina)*, 5 FCC Rcd 934, 935 (1990). We do not believe that Piper has overcome this presumption.

10. We believe the public interest would be served by the substitution of Channel 264C3 for Channel 264A at Milledgeville, Georgia, and the allotment of Channel 266A to Hannahs Mill, Georgia. The allotment of Channel 266A in lieu of Channel 264A at Hannahs Mill will provide that community with a first local FM service and will provide service to more people within the 1.0 mV/m contour than would Channel 264A, while permitting the provision of a wide area to Milledgeville. An engineering analysis has determined that Channel 264C3 can be substituted for Channel 264A at Milledgeville, Georgia, in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.4 kilometers (7.7 miles) east of the community.[6] Channel 266A can be allotted to Hannahs Mill in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (6.3 miles) southwest.[7] In accordance with Section 1.420(g) of the Commission's Rules, we will modify the license of Station WLRR(FM) at Milledgeville to specify operation on Channel 264C3.

11. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 12, 1991,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Hannahs Mill, Georgia	266A
Milledgeville, Georgia	264C3

12. The window period for filing applications at Hannahs Mill, Georgia, will open on **August 13, 1991,** and close on **September 12, 1991.**

13. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Station WLRR(FM), Milledgeville, Georgia, IS MODIFIED, to specify operation on Channel 264C3 in lieu of Channel 264A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

14. IT IS FURTHER ORDERED, That the petition for rule making filed by Sam V. Stacy (RM-6899), IS DENIED.

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[6] The coordinates for Channel 264C3 at Milledgeville are North Latitude 33-05-24 and West Longitude 83-06-04.

[7] The coordinates for Channel 266A at Hannahs Mill are North Latitude 32-51-49 and West Longitude 84-25-10. Because this petition was filed prior to October 2, 1989, applicants at Hannahs Mill may avail themselves of the provisions of Section 73.213(c) of the Commission's Rules with respect to Station WCJM(FM), Channel 265A, Westpoint, Georgia, at coordinates 32-53-42 and 85-09-32. *See* 47 CFR, Section 73.213(c).

15. IT IS FURTHER ORDERED, That the petition for rule making filed by Radio Perry, Inc. (RM-7021), IS DISMISSED.

16. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

17. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-187

In the Matter of

Amendment of Section 73.202(b), RM-7698
Table of Allotments,
FM Broadcast Stations.
(Hamilton and Glen Rose, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 18, 1991; Released: June 28, 1991

Comment Date: August 19, 1991
Reply Comment Date: September 3, 1991

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Fletcher Broadcasting, Inc. ("petitioner"), permittee of Station KCLW-FM, Channel 221A at Hamilton, Texas, requesting the reallotment of its channel to Glen Rose, Texas, as a Class C2 channel and modification of its construction permit to specify Glen Rose as its community of license.[1] Petitioner states that it will apply for Channel 221C2, if allotted.

2. Petitioner submits that the allotment of Channel 221C2 to Glen Rose will provide the community with its first local aural transmission service. Glen Rose is located in Somervell County and has an estimated 1986 population of 2,340 (an increase of 12.8% from the 1980 U.S. Census population of 2,075). In addition, petitioner shows that KCLW-FM can place a 70 dBu contour over Glen Rose, and a 60 dBu contour over Hamilton, operating as a class C2 station from the proposed Glen Rose transmitter site. Petitioner asserts that Hamilton has an AM service, and that the removal of Station KCLW-FM from Hamilton, will not deprive that community of its only local aural transmission service.

3. We believe the proposal warrants further consideration since it could provide Glen Rose with its first local aural transmission service. The proposal would not deprive Hamilton of its only local aural transmission service. Furthermore, the allotment of Channel 221C2 at Glen Rose is mutually exclusive with the present allotment of Channel 221A at Hamilton. Channel 221C2 can be allotted to Glen Rose in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.5 kilometers (15.2 miles) southwest to accommodate petitioner's desired transmitter site.[2] As requested, we also propose to modify petitioner's construction permit for Station KCLW-FM to specify operation on Channel 221C2 at Glen Rose. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 221C2 at Glen Rose or require the petitioner to demonstrate the availability of an additional equivalent class channel.

4. Our engineering analysis reveals that the 1 mV/m contour of requested Channel 221C2 at Glen Rose would lie within the Grade B contour of Station KCEN-TV, Channel 6, Temple, Texas. In accordance with the *First Report and Order* in MM Docket No. 86-144, 52 FR 8259, March 17, 1989, petitioner should provide a preclusion study demonstrating the impact of allotting Channel 221C2 at Glen Rose on the availability of Class A, C3, C2, C1 and C noncommercial educational allotments on Channels 218, 219 and 220. Guidelines for the preclusion study are as follows:

(a) The preclusion study should be done on each affected channel for each possible class of noncommercial FM station (that is, A, B1 and B in Zones I and I-A or A, C3, C2, C1 and C in Zone II).

(b) For each class of noncommercial educational FM station, maximum power and antenna height and omnidirectional operation should be assumed.

(c) Preclusion should be considered to occur only if the noncommercial educational FM station would be prevented by the upgrade, and is not already precluded either by the existing Channel 221 station that is the subject of the proposal or by other commercial or noncommercial educational FM stations.

(d) Preclusion should be determined both inside and outside the Channel 6 Grade B contour. While the existence of the Channel 6 station imposes a burden on noncommercial educational FM applicants, determination of the preclusive effect of the Channel 6 station can be complicated and may be dependent on the particular transmitter site selected. Therefore, the initial preclusion area determination should be done without considering the Channel 6 station's impact. The Channel 6 impact can be included at a later stage of study, if necessary.

(e) Within any identified preclusion area, significant communities, normally those with a population in excess of 1,000, should be identified. Existing local noncommercial educational FM stations in the precluded communities should be listed.

(f) Optionally, if precluded communities without local noncommercial educational FM service are found, additional information can be provided, including:

(i) Availability of noncommercial educational FM service from stations licensed to nearby communities;

---

[1] We note that the petition for rule making was jointly filed by A. Tony Beltran (Beltran), permittee of Station KCLW-FM, and Fletcher Broadcasting, Inc. (Fletcher), assignee. Beltran's applications before the Commission for renewal of his construction permit for Station KCLW-FM and for the assignment of that station to Fletcher were granted May 24, 1991.

[2] The coordinates for Channel 221C2 at Glen Rose are North Latitude 32-07-25 and West Longitude 97-58-49.

(ii) Availability of other channels for a noncommercial educational FM station in the precluded community (include consideration of Channel 6 station impact); and

(iii) Impact of Channel 6 on noncommercial educational FM channel availability in the community. If a precluded community is a reasonable distance beyond the Grade B contour of the Channel 6 station, then it is possible that the Channel 6 station has no effect on the availability of a particular class of noncommercial educational FM station in that community. The noncommercial educational FM channel that is closest to Channel 6 in frequency, and therefore more likely to be affected, is Channel 201. Preclusion in a community that is beyond the Channel 6 impact distance is not significant. The appropriate impact distance for Class C stations is found in Table A of Section 73.525(a)(1) of the Commission's Rules. Lesser distances are appropriate for other classes of noncommercial educational FM stations. For convenience, the distances have been calculated for Channel 201 and are as follows:

Class	Distance from Channel 6 station
A	165 kilometers
B1	189 kilometers
B	207 kilometers
C3	189 kilometers
C2	207 kilometers
C1	234 kilometers
C	265 kilometers

Precluded communities within these distances from the Channel 6 station generally constitute a negative factor to be weighed against the public interest gains sought through the upgrade.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Hamilton, Texas	221A	--
Glen Rose, Texas	--	221C2

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **August 19, 1991,** and reply comments on or before **September 3, 1991,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Anne Goodwin Crump
Fletcher, Heald & Hildreth
1225 Connecticut Ave., N.W., Suite 400
Washington, D.C. 20036
(Counsel for Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment

is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-471

In the Matter of

Amendment of Section 73.202(b), RM-7432
Table of Allotments,
FM Broadcast Stations.
(Cadillac, Michigan)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 18, 1991; Released: June 28, 1991

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 6282 (1990), proposing the substitution of FM Channel 244C3 for Channel 244A at Cadillac, Michigan, and modification of the license for Station WWLZ(FM) to specify the new channel. The *Notice* was issued in response to a petition filed by MacDonald Broadcasting Company ("petitioner"). Petitioner filed comments reaffirming its interest in the channel. No other comments were received.

2. We believe the public interest would be served by substituting Channel 244C3 for Channel 244A at Cadillac, Michigan, because this would provide the community with an additional wide area FM broadcast service. As indicated in the *Notice*, Channel 244C3 can be allotted to Cadillac, Michigan, consistent with the Commission's spacing requirements at petitioner's specified site.

[1] Since Cadillac is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained for this allotment. We have authorized a modification of petitioner's license for Station WWLZ(FM), Channel 244A, Cadillac, Michigan, to specify operation on Channel 244C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 12, 1991,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Cadillac, Michigan	244C3

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WWLZ(FM), Cadillac, Michigan, IS MODIFIED to specify operation on Channel 244C3, in lieu of Channel 244A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Acting Chief, Allocations Branch
Policy and Rules Division

[1] The coordinates for Channel 244C3 are 44-20-25 and 85-35-34.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-287

In the Matter of

Southwestern Bell Telephone Company
Revisions to Tariff F.C.C. No. 6 — Transmittal No. 1629

New England Telephone and Telegraph Company
Revisions to Tariff F.C.C. No. 40 — Transmittal No. 925

Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company
Revisions to Tariff F.C.C. No. 1 — Transmittal No. 104

Contel Service Corporation
Revisions to Tariff F.C.C. No. 1 — Transmittal No. 7

Pacific Bell Telephone Company

New York Telephone Company

MEMORANDUM OPINION AND ORDER

Adopted: June 3, 1991; Released: June 5, 1991

By the Commission:

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I. INTRODUCTION

A. Background

1. The above-referenced local exchange carriers (LECs), either by the tariff transmittals referenced above, or by offerings that are not described in effective tariffs, are currently providing access service in some locations through the use of alternate switching technologies. Substantial issues of fact and law were raised by petitions against the tariff filings of Southwestern Bell Telephone Company (SWB), New England Telephone and Telegraph Company (NET), and Contel Service Corporation (Contel), referenced above. Alternate technology service tariffs filed by Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West) became effective subject to certain reporting requirements established by the Common Carrier Bureau (Bureau). Pacific Bell Telephone Company (Pacific) and New York Telephone Company (NYT) also use alternate technologies to provide access service, although this practice is not expressly described in the relevant tariffs.

2. The Bureau, upon a review of the relevant tariffs or practices of the LECs, and various filings by interested parties, determined that certain issues should be investigated with regard to the reasonableness of the use of alternate technologies[1] by these LECs to provide equal access service to interexchange carriers (ICs). In this Order we decide the issues designated by the Bureau, and terminate the investigation and accounting orders associated with the investigation.

B. Summary of Actions Taken in this Order

3. Our review of the Bureau's actions and the issues raised in this proceeding leads us to conclude that not only did the Bureau have the authority necessary to initiate this investigation, but that the questions identified by the Bureau warranted this investigation and the actions we are taking in this Order. The central issue in this investigation is not whether alternate technologies provide equal access, or what the technical characteristics of equal access are, but whether this particular method chosen by some LECs to meet their equal access responsibilities constitutes a just and reasonable practice. The focus of this investigation is essentially a question of quality of service provided through the use of alternate technologies, and whether the practices followed by the LECs in deploying these technologies constitute discrimination among classes of persons and localities in the provision of quality telecommunications services. We conclude that nothing in the Bureau's actions violated the Act,[2] the Rules of this Commission, prior Orders of this Commission, or the policies of this Commission. This investigation represents a proper exercise of this Commission's responsibility to further the goals of the Communications Act.

4. Upon a review of the record, we determine that, in an historical perspective, the use of alternate technologies by the BOCs during the time period covered by this proceeding was not an unjust or unreasonable practice, as it was driven by the events occurring at that time, and was a reasonable response to those events. As a result, we conclude that the investment of these BOCs should not be adjusted, nor should the rates charged by these BOCs for FGD service provided through alternate technologies be set at any level less than the amount charged by each BOC for premium FGD access.

5. We also conclude, however, primarily because of the negative impact that the use of alternate technologies has on quality of service, that the permanent use of these technologies by these BOCs would constitute an unjust and unreasonable practice. We find, in addition, that the permanent use of these technologies would result in an unreasonable disadvantage to certain persons and localities, and therefore would be impermissible under the Act. Accordingly, as an incentive to phase out the use of alternate technologies, we require the BOC parties that provide access through the use of alternate technologies after December 31, 1992, to charge less than a premium rate for such access. The specific amount the BOCs can charge for such access after December 31, 1992, will, if necessary, be determined at a later date. *See* para. 201. This determination appears to be consistent with the deployment decisions of NET and NYT (NYNEX), SWB, Pacific, and therefore should not have a substantial impact on those LECs. Although US West has characterized its use of alternate technologies as "temporary," it has not committed to replacement of those technologies on any particular timetable.

6. Insofar as we determine that the initial deployment decisions of these BOCs did not constitute an unjust or unreasonable practice, we also conclude that the temporary use of these technologies by these BOCs, extending to December 31, 1992, is also not unjust and unreasonable. We also conclude that the past use of alternate technologies does not make access service nonpremium access service for purposes of our Part 69 access charge rules. Therefore, we do not require these BOCs, until December 31, 1992, to adjust their rates to any level less than the amount charged by each BOC for FGD access.

7. Our review of the record also discloses that in limited instances BOC use of alternate technologies on a longer term basis might not constitute an unjust or unreasonable practice. We will entertain waivers in certain very limited circumstances. For example, if electronic switches are built to handle a minimum number of access lines, say 10,000, and an end office serves less than 10,000 access lines, then a waiver of the requirements of this Order would be justified. The burden rests with the carrier to demonstrate that switch replacement is not feasible, or that replacement is clearly uneconomical.

8. We also determine that, to the extent LECs provide intraLATA, interstate access to ICs, route that traffic through an alternate technology, and do not route their own traffic through the same alternate technology, such practice would constitute unreasonable discrimination if continued indefinitely. It is apparent from the record, however, that the number of instances in which this occurs is presently *de minimis*, and that this problem will be resolved within a reasonable time through application of our other findings in this Order.

9. Finally, we determine that Contel's use of alternate technologies to provide centralized equal access from tandems in the states of Iowa and Indiana is also not reasonable on a permanent basis, and that Contel, in light of its merger with the GTE Corporation (GTE), should be subject to the same requirements that we impose on the BOCs in this Order. The analysis we apply to the BOCs is appropriately applied to GTE and, in turn, Contel because of the material similarities in the equal access obligations of the BOCs and GTE. [3]

10. This Order first summarizes the procedural history of this investigation. For purposes of our review and analysis, we then address the pending applications for review and other procedural motions regarding the Bureau's investigation Orders, and address the procedural and legal challenges to the prior Bureau actions and to our right to decide the merits. Finally, we address the substance of the issues designated and the responses of the parties to this proceeding, and we make a final determination of these issues.

II. PROCEDURAL HISTORY

11. On December 29, 1987, the Bureau denied petitions to reject, suspend, or investigate the tariff revisions of US West in Transmittal No. 104, which described the use of alternate technologies in the provision of access service.[4] The *US West Order* required the filing of data regarding the incidence of post-dial delay[5] in connection with the use of the alternate technology deployed by US West. Pursuant to that Order, US West filed a report with the Commission on June 30, 1988.[6]

12. On June 3, 1988, the Bureau released a Memorandum Opinion and Order suspending the proposed tariff revisions in SWB Transmittal No. 1629 and designating certain issues for investigation.[7] The *InvestigationOrder* required SWB to file a direct case in response to the issues designated for investigation by July 5, 1988. SWB filed an application for extension of time and a petition for reconsideration on June 27, 1988.

13. On July 1, 1988, the Bureau released an Order granting an indefinite extension of the deadline for filing the SWB direct case in order to allow the Bureau time to complete a thorough assessment of the arguments of SWB and any other parties.[8] This assessment of the relevant arguments resulted in the release of an Order on September 19, 1988, denying SWB's request to terminate the investigation, granting its request to terminate the suspension of its tariff, and deferring action on SWB's request to reformulate the issues for investigation. That Order said the issues would be redesignated at a later date.[9]

14. Also on September 19, 1988, the Bureau released a Memorandum Opinion and Order suspending for one day NET Transmittal No. 925, which also described the use of an alternate technology. That Order stated that issues would be designated for investigation at a later date, and incorporated the investigation of NET's transmittal into the above-referenced docket.[10]

15. On March 17, 1989, the Bureau completed its review of SWB's request to reformulate the issues under investigation, and the issues raised by the petitions relating to NET's transmittal, and issued an Order designating issues in the investigation of the use of alternate technologies by the above-referenced Bell Operating Companies (BOCs).[11] The investigation was ordered pursuant to Sections 4(i), 4(j), 201(b), 203(c) 204(a), 205 and 403 of the Communications Act, 47 U.S.C. §§ 4(i), 4(j), 201(b), 203(c), 204(a), 205, and 403, and conducted as a notice and comment proceeding.[12] In the *Revised Investigation Order* the Bureau reviewed the US West Report and concluded that investigation of alternate technologies and post-dial delay associated with US West's use of these technologies was warranted, and included US West in the present investigation.[13] The Bureau also determined that although Pacific and NYT were providing access service through the use of alternate technologies, this practice was not expressly described in the relevant access tariffs.[14] Accordingly, the Bureau made those BOCs parties to this proceeding.

16. In response to petitions filed against tariff revisions filed by Contel Service Corporation (Contel), the Bureau, on March 20, 1989, included Contel in this investigation, and designated an additional issue with respect to Contel.[15] Numerous parties have commented on the direct cases, a listing of which are attached hereto as Appendix A.

III. APPLICATIONS FOR REVIEW; PROCEDURAL ISSUES

A. Introduction

17. Applications for review and procedural motions have been filed with this Commission regarding this investigation. Those which are pending and were filed prior to the filing of the direct cases include three pleadings filed by US West[16] and one by Pacific.[17] Procedural issues are also raised in some of the direct cases and pleadings associated with the direct cases. These questions generally relate to the Bureau's authority to initiate this proceeding or the Commission's authority to determine the lawfulness of these LECs conduct at this time; we will address these procedural issues first.

B. US West Application for Review

1. Application

18. The US West application for review requests that additional issues be designated for investigation. US West requests that the ICs be made parties to this investigation, arguing that the issue of post-dial delay can only be properly considered if all of the elements of post-dial delay, contributed by all carriers, are before this Commission. US West Application at 1-3. US West argues that after the ICs' installation of Common Channel Signalling System 7 (CCSS7), which will result in an anticipated decrease in set-up times, the set-up time incurred by the use of alternate technologies will have little or no impact on end users. US West concludes that it cannot defend its use of alternate technologies, and justify the resultant impact on end users, without inclusion of the ICs in this investigation. US West proposes additional issues to be designated in the investigation with respect to ICs. *Id.* at 4-6 & Attachment A.

2. Oppositions

19. AT&T opposes US West's application for review, stating that the Bureau had already rejected a similar request by SWB for an industry-wide review and noting that the Bureau determined that an end-to-end study, and a study of end user perception, would be an unproductive effort.[18] AT&T notes that this investigation focuses on the post-dial delay caused by LEC use of alternate technologies, and is not an investigation of total interstate post-dial delay. AT&T also notes that the Bureau recognized that Bell Communications Research (Bellcore) studies on file with this Commission already provided representative IC post-dial delay times, sufficient for the purposes of the investigation.[19] Finally, AT&T states that US West's argument concerning the relevance of IC conversion to CCSS7 is meritless. AT&T notes that IC conversion to CCSS7 only reduces IC post-dial delay time, and does not affect the post-dial delay contributed by LEC use of alternate technologies, use over which the ICs have no control. AT&T Opposition at 2-5 & 4 n.**.

20. ALC invokes many of the same arguments as AT&T in its opposition, asserting that it is nonsensical for US West to argue that the efforts and expense of the ICs in implementing CCSS7 in order to decrease set-up time makes it proper or acceptable for the LECs to cut corners and increase set-up times with the use of inferior technologies. ALC also challenges US West's application on procedural grounds, arguing that the *Revised Investigation Order* is interlocutory, and therefore not subject to review. ALC Opposition at 7-9.

3. Reply

21. In its reply, US West contends that the Bureau has recognized that end-to-end post-dial delay analysis is relevant[20] and offers to withdraw its motion with respect to any IC which stipulates that the Bellcore study methodology is correct, and that its set-up time has been reduced by 5 or more seconds since January 1, 1988. US West Reply at 5-6.

4. Discussion

22. The issue of including IC switching practices in this investigation was previously raised by SWB in a petition for reconsideration of the *Investigation Order*.[21] As a result

of its analysis of the arguments raised at that time, the Bureau declined to name the ICs as parties to this investigation.[22] The Bureau noted that Bellcore studies incorporated into the record of the proceeding contained sufficient information regarding IC set-up times in order to determine the impact of IC set-up times on overall post-dial delay.[23] In addition, the Bureau observed that conversion by the ICs to CCSS7 will cause all IC set-up times to become roughly equivalent.[24] We agree with the reasoning of the Bureau, and its decision not to incorporate ICs as parties.[25] The expansion of the scope of this proceeding suggested by US West would unduly delay resolution of issues relating to the LEC's choice of technologies and would not be likely to add significantly to the relevant information that is already in the record.

23. We also agree with AT&T's and ALC's analysis of US West's arguments. The focus of this investigation is, *inter alia*, the post-dial delay contributed by certain tariffed and non-tariffed practices of LECs, and not total interstate post-dial delay. The activities of ICs in reducing their component of post-dial delay have no relevance, in this instance, to LEC activities which also impact post-dial delay. As customers of the LECs, ICs have no control over the post-dial delay contributed by the LECs. We conclude that it is unpersuasive to argue that LECs should be permitted to introduce delays into the network to the extent that their customers, at great effort and expense, remove delay from the network. We determine, *infra*, that the proper comparison for the measurement of post-dial delay is between FGD service provided through electronic switches versus alternate technologies. Accordingly, we deny US West's application.

C. US West Motions To Terminate and Dismiss

1. Motions

24. US West asserts that pursuant to Section 7(b) of the Act, 47 U.S.C. § 157(b), this Commission must have concluded this investigation by June 3, 1989. Section 7(b) states that "[i]f the Commission initiates its own proceeding for a new technology or service, such a proceeding shall be completed within 12 months after it is initiated." US West argues that alternate technologies are new technologies within the ambit of the Act, and that this investigation must therefore have been concluded by June 3, 1989. US West Motion To Terminate at 1-2.

25. In a separate motion, however, US West avers that it should be dismissed from the investigation entirely. US West states that the failure of this Commission to rule on petitions filed by various parties seeking a Commission ruling on the merits of alternate technologies, and whether such technologies constitute equal access,[26] within one year from the filing of those petitions violates Section 7(b).[27] US West again argues that alternate technologies are new technologies, and since we did not act on the petitions regarding US West's use of these technologies within one year, US West must be dismissed from this investigation. US West also alleges that it has been harmed by this Commission's failure to determine this issue within one year of the filing after the petitions.[28]

2. Oppositions

26. In opposition to US West's motion to terminate the investigation, ALC asserts that US West is estopped to invoke Section 7(b) because of its earlier filed support of SWB's motion to extend the deadlines in this proceeding.[29] ALC argues that US West's use of Section 7(b) is inapposite because that section refers to findings regarding whether a new technology is "in the public interest." The purpose of the instant investigation, however, is to determine whether the use of these technologies in the provision of equal access is "just and reasonable" or "discriminatory." These are determinations made under Sections 201(b) and 202(a) of the Act, and therefore are not subject to the time deadline stated in Section 7(b). *Id.* at 1-3.

27. ALC argues, with respect to US West's motion to dismiss, that US West requests a separate proceeding for itself, a solution which would waste Commission resources. The US West motion to dismiss acknowledged, notes ALC, that the ALC, MCI, and Sprint petitions did not propose the use of new technologies. ALC argues that Section 7(b) requires a proposal in a petition or application to start the time limitation in that section. If Section 7(b) has any application to the present proceeding, asserts ALC, it applies only to public interest issues or findings, and commences only when this Commission commenced the investigation. In addition, ALC notes that US West mischaracterizes ALC's original petition for declaratory ruling. Contrary to US West's assertions, ALC states that it requested not that the technologies be prohibited, but that this Commission find that use of alternate technologies fails to satisfy the LECs' obligations to provide equal access, that use of the technologies must be prohibited if they cannot be implemented without degrading dial-1 service, and that LECs should be required to route all their own toll traffic in a manner identical to that used for the toll traffic of non-LECs. *Id.* at 4-7.

28. MCI characterizes US West's motion to terminate the investigation for surpassing the Section 7(b) statutory period as frivolous. MCI claims that, to the extent Section 7 applies at all, the relevant period would be one year from the March 17, 1989 release date of the *Revised Designation Order*, and not the dates that US West claims should govern the duration of the investigation. MCI Reply to Direct Cases at 43.

3. Reply

29. In its reply, US West states that since a finding under Sections 201(a) and 202(b) would be, in itself, a public interest finding, Section 7(b) does apply. US West Reply at 2-4. US West states that it does not seek a proceeding only for itself, but that it wants to end regulatory uncertainty as Section 7(b) provides. *Id.* at 4.

4. Discussion

30. Section 7(b), by its terms, applies to "any new technology or service proposed in a petition or application," and requires this Commission to determine whether the technology or service is in the public interest within one year after the filing of a petition or application, or Commission initiation of a proceeding.[30] In response to assertions that this Section of the Act applies to the instant proceeding, we would first note that the instant investigation does not concern the use of a "new" technology, but concerns the continued use, and extension of useful life, of an old technology in lieu of the use of a new technology.

31. Secondly, alternate technologies are used to provide a service which also is not new: the provision of equal access to ICs. The provision of equal access to ICs is a requirement imposed by both the federal courts and this Commission. The use of alternate technologies to provide FGD service permits the offering of this service from certain older end office switches, subject to additional restrictions on service feature availability as compared to newer electronic offices, such as the absence of direct trunking and overlap outpulsing.[31] Therefore, we conclude that since Section 7(b) refers to "a new technology or service," it cannot be interpreted to endorse methods for the provision of existing services at additional locations, or the continued use of older, outmoded technologies.

32. Furthermore, Section 7(b) refers to a "proposed" new technology or service. In the case of most of the tariffs under review, alternate technologies were in use prior to the tariffing of such practice. In the case of alternate technologies used by those LECs whose tariffs do not explicitly reflect the use of these technologies, such technologies were in use prior to the release of the *Revised Designation Order*. Neither the tariff revisions or the petitions filed by other parties[32] constitute a "proposal" for the purposes of Section 7.[33]

33. The tariff revisions filed by US West, SWB, NET, and Contel were necessary for those LECs to offer this service, constituted a change in the access service provided by these LECs, as noted above, and effectively increased the rates paid by ICs for access from these switches. In addition, the LECs' choice of offering FGD service through the use of alternate technologies rather than through the traditional method of switch replacement[34] comprises a practice which is elemental to the offering of FGD service as it affects the provision of service from the affected offices.[35]

34. Section 203 of the Act requires common carriers to keep on file with the Commission schedules showing, *inter alia*, "the classifications, practices, and regulations affecting such charges."[36] The Act prohibits the offering of service without the filing of such schedules,[37] and empowers this Commission to conduct a hearing on the lawfulness of any proposed charge or practice, and to issue accounting orders with respect to any such proposed charge or practice.[38] Since the practice of using alternate technologies was tariffed by some LECs, and with respect to the other parties to this investigation, is a practice which either is required to be filed with this Commission pursuant to Section 203 and this Commission's Rules,[39] or is implicit in the tariffs on file with this Commission, we conclude that our review of these proceedings is covered by Sections 201-204, and not Section 7.

35. This investigation involves a determination whether the practice of using alternate technologies to provide equal access is just and reasonable, and whether the use of these technologies is unreasonably discriminatory between persons or localities. Section 201(b) of the Act declares that "any . . . charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful."[40] Section 202(a) of the Act also provides that "[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in [its] practices . . . or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, [or] locality."[41] Although unlawful activities may be considered not to be in the public interest, a public interest finding is not at issue in this investigation. A determination that the practice under investigation violates either Section 201 or 202 is sufficient to find the practice unlawful.

36. Although a determination that this practice is not just and reasonable would impact the ability of the LECs to offer equal access through the use of alternate technologies as proposed in the instant tariff revisions, such a determination would not constitute a decision regarding any other future or proposed uses for these technologies. Since the purpose of this investigation is not to make a public interest finding, and the potential impact of this investigation is clearly different from the impact of a public interest finding, we conclude that Section 7(a) has no application to this investigation.

D. Pacific Application for Review

1. Application

37. Pacific also filed an application for review requesting this Commission either to review and terminate the instant investigation or stay and modify the *Revised Investigation Order*, and specifically remove Pacific from the investigation. Pacific Application for Review at 1-3. Pacific alleges that the *Revised Investigation Order* is in conflict with established Commission policy and precedent. According to Pacific, the Bureau's decision to initiate this investigation conflicts with a previous Commission Order which required that equal access concerns be resolved through negotiation and this Commission's complaint process and evaluated on a "customer perception test" basis.[42] Furthermore, Pacific alleges that the *Revised Investigation Order* ignores Commission precedent determining that this Commission would not investigate in depth the technical issues associated with equal access, or determine technical standards to be met.[43]

38. Pacific claims that the Bureau's inquiry into nonpremium rates for FGD is contrary to a previous Commission Order which specifically rejected continued discount rates for FGD service.[44] Pacific alleges that the *Revised Investigation Order* undermines and is in conflict with this Commission's policy of economically providing equal access.[45] The Bureau's action, according to Pacific, is unfair in that it now challenges actions taken by Pacific in reliance upon past Commission decisions. Pacific Application at 9. Pacific also argues that alternate technologies provide equal access, as that term is defined by both the MFJ Court and this Commission, as access "whose overall quality in a particular area is equal within a reasonable range which is applicable to all carriers."[46]

39. Pacific also alleges that the *Revised Designation Order* does not comply with the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, or proper administrative procedure, and exceeds the Bureau's authority. The instant proceeding is a Rule Making, argues Pacific, because it determines future rights of the parties, and as such, the burden of proof has to be placed upon the proponent of the rule. According to Pacific, the Bureau's placement of the burden of proof on Pacific violates its due process rights. Pacific argues that this Commission's rules prohibit a Bureau from instituting a Rule Making,[47] and concludes that those parts of the *Revised Investigation Order* which purport to determine Pacific's future rights and obligations are void. *Id.* at 11-15.

40. Pacific argues that the instant proceeding is also an adjudicatory proceeding which may lead to a determination of rates for Pacific, and that it must therefore proceed pursuant to a trial-type hearing.[48] The combined Rule Making and adjudicatory nature of this proceeding, contends Pacific, also makes this proceeding unlawful. *Id.* at 16-18. Pacific also alleges that the *Revised Investigation Order* exceeds the Bureau's delegated authority in that it violates Commission precedent, constitutes a change in Commission policy, and raises substantial issues of fact and law that cannot be resolved under existing precedent.[49]

2. Opposition

41. ALC opposes Pacific's Application for Review, arguing that it must be dismissed as being filed more than 30 days after the release of the *Revised Investigation Order*, and seeks review of an interlocutory Commission action. ALC contends that in the absence of a showing of harm that would be caused by this investigation going forward, addressing the issues raised by Pacific would be a waste of Commission resources. ALC Opposition at 1-3.

42. Pacific's application incorrectly alleges that this Commission has determined that alternate technologies provide equal access and are reasonable, according to ALC. ALC argues that the *Revised Investigation Order* is in compliance with past Commission actions, noting that in contrast to the TDX Rule Making proceeding, the Bureau has found evidence of post-dial delay, and has found that the use of alternate technologies is not transitional. *Id.* at 3-5.

43. Pacific's claim that negotiations are a condition precedent to the filing of a complaint with respect to the provision of equal access relies entirely on dicta in the *TDX Order*, argues ALC. According to ALC, negotiations, although not required, have effectively taken place and failed. Even though the use of alternate technologies, and the post-dial delay caused by their use, has been vigorously debated by the ICs and LECs, the BOC parties to this proceeding, unlike the other BOCs,[50] have decided to use these technologies anyway. The decision of the BOC parties to use these technologies reflects the failure of negotiations, avers ALC, and the petitions filed by ALC, MCI, and Sprint represent the complaints by these access customers, in compliance with the *TDX Order*. *Id.*

44. ALC contests Pacific's statements that this Commission has already approved the use of alternate technologies. ALC notes that in the orders cited by Pacific, the use of alternate technologies was not even contemplated, and that at the time of the issuance of those orders, the only options for the provision of equal access were either switch replacement, or the upgrading of software in electronic offices. To the contrary, ALC contends, this Commission recently refused a request by the BOCs to make participation in an 800 Service database plan mandatory until the BOCs had undertaken certain activities to reduce post-dial delay.[51] In addition, ALC notes that this Commission recently highlighted our interest in increasing quality of service oversight with respect to price cap regulation. *Id.* at 5-6.

45. Contrary to the representations of Pacific, ALC alleges that prior Commission orders do not determine whether anything at all provides equal access. ALC notes that in the *Phase I Order* cited by Pacific, this Commission did not find that FGD provided equal access, but stated that this Commission assumed that it constituted equal access "in the absence of a contrary finding."[52] ALC also notes that Pacific fails to cite any Commission finding that alternate technologies provide equal access. *Id.* at 7-8.

46. In response to Pacific's claim that the instant proceeding is a Rule Making, and therefore outside the authority of the Bureau, ALC states that this proceeding is an investigation into current practices under tariff, and that every investigation has an impact on future practices. That fact, in itself, does not make this proceeding a Rule Making, concludes ALC, further noting that LECs which are not parties to this investigation will not be directly impacted. *Id.* at 8-9. ALC likewise rejects Pacific's claim that this proceeding requires a full hearing, noting that under the Administrative Procedure Act, a hearing is deemed provided with a proceeding on the record using written submissions. *Id.* at 9-10. Finally, ALC contends that the Bureau has not exceeded its delegated authority, noting that Pacific has failed to identify which issues are so "novel" as to prohibit Bureau action. *Id.* at 10-11.

3. Reply

47. The Pacific reply[53] asserts that pursuant to Section 1.4(b) of this Commission's Rules, 47 C.F.R. § 1.4(b), its Application for Review was timely filed. Pacific also avers that this Commission's rules plainly allow for immediate review of interlocutory orders[54] in order to promote efficiency, and that the investigation of whether alternate technologies provide equal access is a novel issue. Even if the issue being investigated is not novel, Pacific argues, the Bureau's Order conflicts with Commission precedent because the *Investigation Order* uses standards other than the customer perception test, and anticipates the setting of technical standards for equal access. Pacific Reply at 1-3.

48. Pacific states that, contrary to ALC's statements, it has not negotiated alternate technology usage with any IC, and that petitions are procedurally and significantly different from informal or formal complaints. *Id.* at 3-4. Further, Pacific alleges that the *TDX Order* concerned post-dial delay and equal access, and that it is of no consequence that it did not concern the use of specific devices. Although this Commission is concerned with the quality of service, the *Revised Investigation Order* contradicts Commission policy, according to Pacific, in attempting to establish technical standards for the provision of equal access, and impliedly questioning Commission policy that equal access be provided in a cost effective manner.[55]

4. Discussion

49. The issue in the instant proceeding is whether the use of alternate technologies in the provision of access service, or the charging of premium rates for access service that uses such technologies, is an unjust or unreasonable practice, or imposes an undue or unreasonable disadvantage to any class of persons or locality.[56] We are also endeavoring to determine whether the post-dial delay resulting from the use of alternate technologies adversely impacts the efficiency of the network or service quality provided by the LECs from switches where alternate technologies are installed.[57] Another issue is whether the use of alternate technologies to provide intraLATA access for ICs, but not for the BOCs' own traffic, constitutes unjust or unreasonable discrimination.[58]

50. Pacific's claim that the Bureau decision to initiate this investigation conflicts with the *TDX Order* is not well-founded. The *TDX Order* was issued in response to allegations that LECs were implementing equal access in a manner that did not provide all ICs with the same quality of access. The primary issue before this Commission in the *TDX Order* was the adoption of a more detailed definition and technical standards for equal access service to ensure that AT&T and the other ICs received equal treatment. Any quality of service concerns were limited to the relative quality of equal access provision, and the setting of technical standards to define equal access. An interpretation of the current investigation as seeking to set technical standards seriously misconstrues the focus of the investigation. The focus of the current investigation is the impact on network service quality to all access customers of methods for providing equal access which are different than those methods traditionally used. We seek here to determine whether the method chosen constitutes an unreasonable practice. This investigation does not involve the setting of standards for equivalent quality of access, or determining if the use of alternate technologies provides equivalent quality of access to all ICs.

51. The use of alternate technologies was not contemplated at the time of the *TDX Order*. Therefore, the issues before us in this investigation were not contemplated at the time of that proceeding. In the *TDX Order*, this Commission specifically determined that the equal access implementation problems that had been alleged were temporary and that there was no definitive evidence of post-dial delay problems due to network design. In contrast, the Bureau in this proceeding was confronted with allegations that some LECs have chosen to achieve equal access for all ICs by methods that degrade the quality of service for all ICs and their customers.

52. The determination by this Commission that the negotiation and complaint process should be used to resolve equal access implementation problems addressed in the *TDX Order* is not applicable because the use of alternate technologies creates a different type of equal access problem that was not considered in the *TDX Order*. The *TDX Order* did not limit or alter the Bureau's discretion to initiate an investigation pursuant to Section 204, 205, 403, or any combination of the sections to resolve the questions that the Bureau designated for investigation.

53. The present record also contains evidence of qualitative differences between the access provided by the BOCs to themselves and to ICs for interstate intraLATA service. The TDX proceeding, however, focused on the quality of equal access provided to AT&T and the OCCs. The issue of the provision of equal access to ICs and the BOCs for their respective services was not previously addressed.

54. With respect to Pacific's procedural arguments, we note first that we need not decide the question of whether the Bureau improperly placed the burden of proof on the LECs. As discussed below (*see* para. 72), we are able to resolve the factual issues in this case clearly and unequivocally without regard to who bears the burden of proof.

55. The fact that the Bureau's delegated authority regarding rule making and investigatory proceedings precludes it from issuing notices of proposed rule making[59] is irrelevant to the question of its delegated authority to issue the designation order in this investigation. That limit on the Bureau's delegated authority was intended only to reserve to the Commission the authority to initiate rule makings of general applicability. To the extent this investigation may be characterized as a rule making, it is a rule making of particular applicability to the named carriers, not of general applicability.[60] In any event, a notice of proposed rule making was not required, because the carriers involved all had actual notice.[61] Accordingly, the Bureau did not exceed its delegated authority.

56. We also disagree with Pacific that it was entitled to a trial-type hearing. The *NARUC v. FCC* case on which it relies specifically avoided addressing the question of whether a trial-type hearing is required in the type of proceeding now before us, although it did make reference to a Commission decision holding that notice and comment proceedings regarding the legality of rates satisfied the requirement for a "full opportunity for hearing" under Section 205(b) of the Communications Act.[62] We believe that the written record here is sufficient to resolve the factual issues before us, and that Pacific's participation through notice and comment procedures satisfies the hearing requirements of the Communications Act as well as any due process requirements.

57. Our review of Pacific's application, the relevant case law, and the Bureau's actions also leads us to conclude that the Bureau's actions, and the *Revised Investigation Order*, are not in conflict with past Commission actions concerning the definition of equal access, rates which should be charged for FGD service, or the economical provision of equal access service. In the *Phase I Order* this Commission assumed, in the absence of any evidence, that FGD provided equal access.[63] The *Phase I Order* is not in conflict with this investigation, however, because the *Revised Investigation Order* does not seek to determine whether alternate technologies provide equal access.

58. In the *Joint Petition Order* this Commission rejected a request by petitioners to revise the discount phase-out formula for FGD service.[64] The request was rejected because it was based upon the theory that handicaps imposed upon the OCCs by the equal access conversion process justified the continuation of the discount after conversion, and no new information was presented to support the request.[65] The instant investigation is based upon a substantial amount of new information which did not exist at the time of the decision in the *Joint Petition Order*. The determination made by this Commission in the *Joint Petition Order* concerned the continuation of a discount for the OCCs as opposed to AT&T for FGD access. This Commission did not reject, for all purposes, the application of a discount to access service provided ICs.[66]

59. Likewise, the actions of the Bureau and our actions are not in conflict with the policies in the *Consolidated Application Order*. That Order granted a consolidated application filed under Sections 214 and 310(d) of the Act by AT&T and the BOCs for authority from this Commission to engage in such transfers and other transactions as would be required to effectuate divestiture as required by the *MFJ*. The Bureau reflected our concern regarding the cost effective provision of equal access, as demonstrated by issues designated by the Bureau regarding the comparative costs and benefits of alternate technology investment. A primary concern in the *Consolidated Application Order* was that the BOCs' access plans may result in unnecessary expenditures. [67] The issue in this investigation is not that the BOCs may spend too much, or invest unnecessarily, but that an effort to minimize expenditures in the short

term may result in decreased quality of service, and limited availability of service options in some areas, or may result in higher long term costs through higher maintenance costs, eventual required conversions, and ancillary network expenses due to customer impacts such as call abandonments. The Bureau's actions are fully consistent with the Commission's Title I quality of service mandate, and with its responsibilities under Title II, and are not in conflict with the findings in the *Consolidated Application Order*.

60. We also find that at the time of each of these decisions, the use of alternate technologies was not contemplated. In fact, procedures were proposed in the *Phase III Order* [68] for the exemption from equal access requirements in cases whenever it would not be cost effective to replace certain kinds of end office switches. Those are the same type of switches which are now being retrofitted with alternate technologies. The Bureau's actions cannot be in conflict with prior Commission Orders which did not or could not address the issues designated in this proceeding. The Bureau's decision to institute this investigation was fully consistent with the Act and prior Commission precedent and thus did not exceed its delegated authority.[69]

E. Procedural Arguments Presented in Direct Cases

1. Direct Cases

61. SWB insists that the burden of proof is misplaced in this investigation, and that the parties opposing the use of alternate technologies should be made to bear the burden of proof. The burden of proof is on carriers under Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), only when a carrier proposes a new or increased charge, avers SWB; otherwise the burden is on the party challenging the proposed classification, regulation, or practice.[70] SWB argues that its rates were set in its annual access filing, and that the current transmittal has no effect on rates. SWB also asserts that the Court of Appeals has determined that Section 204 does not apply to investigations of the applicability of rates to certain persons, versus the rates themselves.[71]

62. Furthermore, SWB charges that the current investigation concerns the use of new technologies, as evidenced by the concerns of parties opposing its use of such technologies. SWB charges that requiring it to bear the burden of proof under such circumstances would violate Section 7(a) of the Act, 47 U.S.C. § 157(a), which encourages the introduction of new technologies, and places the burden of proof upon parties challenging the introduction of new technologies.[72] SWB concludes that the assignment of the burden of proof to the LECs would be improper given the nature of the investigation and the language of Section 7(a), and that the burden therefore should be assigned to the parties opposing the use of alternate technologies. SWB Direct Case at 5-9. Both US West and Pacific make similar arguments with regard to Sections 7 and 204(a).

63. In addition, US West argues that its use of alternate technologies satisfies the reguirements applicable to FGD service, and that the Bureau confirmed this when it rejected petitions by MCI and Sprint against interstate access tariff revisions which reflected US West's use of alternate technologies to provide FGD services.[73] US West submits that this Commission has repeatedly found that use of alternate technologies promotes the public interest and is a reasonable means of providing equal access on an interstate basis with an acceptable level of service quality.[74] Given these findings, US West asserts, parties opposing the use of alternate technologies bear the burden of demonstrating that any such use is inconsistent with the public interest. US West Direct Case at 12.

2. Oppositions and Comments

64. MCI opposes the BOCs' procedural arguments, claiming that no legitimate basis exists to shift the burden of proof. MCI asserts that the BOCs are proposing to increase access charges for offices served by alternate technologies and therefore bear the burden of proof pursuant to Section 204(a). MCI Opposition at 39.

65. MCI asserts that Section 7 is not applicable to this proceeding because that section only covers parties seeking to prevent the deployment or introduction of new services, not services which exist and are already being offered. *Id.* at 40-41. MCI states that if the investigation only involves making FGD service available in central offices served by electromechanical switches, as SWB proposes, then no new technology or service is at issue and Section 7 is inapposite. *Id.* In the alternative, MCI asserts that Section 7 would not restrict this Commission's investigation even if it were applicable, and no justification exists for relieving the BOCs from their burden of proof since the technologies have already been implemented, are in active use, and the BOCs have sole access to the data regarding the performance and cost/benefit justification of the services provided with the alternate technologies. *Id.* at 42.

66. MCI further argues that a determination of whether practices or rates are just and reasonable does not require a full scale public interest determination,[75] and that the Bureau may decide that the use of alternate technologies is permissible, but the application of premium rates is not, regardless of Section 7. *Id.*

67. MCI also disputes the BOCs' reliance on the Commission decisions in *Iowa Network*, *Indiana Switch*, and *Contel - Indiana*. MCI states that the primary issue in each of those proceedings was whether smaller, independent LECs should be allowed to aggregate traffic and provide transport between the end office and the access tandem. This Commission, MCI asserts, distinguished between the degree of diversity of the independents' end office equipment vis a vis the more standardized offices of the BOCs. In addition, MCI observes that these decisions were made when this Commission had little if any of the data now available regarding the impact of the alternate technologies in network implementation. *Id.* at 44.

68. Finally, MCI disputes contentions by several of the BOCs that the Bureau's investigation is preempted by proceedings before the Department of Justice (DOJ) and the MFJ Court. *Id.* at 14. MCI maintains that the quality of BOC access services and the level of BOC access charges are matters generally reserved to this Commission by the *MFJ* and the Act. Further, MCI asserts that issues pending before the MFJ Court are not relevant to this investigation, and that this Commission has not decided the issues raised in this investigation, that is, the issues of whether the use of alternate technologies is just and reasonable under the Act. *Id.* at 15.

69. Allnet opposes the BOCs procedural arguments, incorporating by reference arguments it made in its opposition to US West's motion to terminate, motion to

dismiss, and application for review. Allnet Opposition at 32. Those arguments generally echo the arguments made by MCI.

3. Replies

70. US West asserts that it is not proposing to impose a new charge or increase access charges as MCI claims. US West notes that the Bureau denied petitions to reject its tariff revisions pertaining to alternate technologies in 1987,[76] and that it has been billing access from its alternate technology offices at premium rates ever since. US West Reply at 48-49. Subsequently, instead of filing for reconsideration or review of that Order, MCI and Allnet filed petitions for declaratory ruling maintaining that alternate technologies were contrary to the public interest, which the Bureau opted not to address in light of its decision to initiate the instant investigation.[77] Thus, US West contends, MCI and Allnet had the burden to prove their allegations as petitioners, and the burden of proof remains with them in the absence of any authority to the contrary.

71. US West asserts that MCI's interpretation would eviscerate the intent of Section 7 to encourage the provision of new technologies and services to the public.[78] US West also states that it never claimed that the MFJ proceedings resolved or preempted the issues in the instant investigation. *Id.* at 54.

4. Discussion

72. The burden of proof issue raised by the parties is irrelevant to our analysis and conclusions in this proceeding. The evidence is sufficiently clear from the filings on both sides of the issue to enable us to make findings regardless of how the burden of proof is assigned. As discussed below, our review of the record demonstrates to us that each of the factual issues designated which involve objective answers may be determined clearly and unequivocally, even if it were assumed that the parties challenging the LECs practices bear the burden of proof. The remaining issues are policy issues which are driven by an application of the facts in the record to our statutory mandate, and the established policies of this Commission.

73. We also conclude that the orders granting Section 214 authorizations cited by the LECs do not represent findings that the offering of equal access through the use of alternate technologies is just and reasonable. The primary issue in each of the Section 214 proceedings was the provision of centralized equal access, not the use of alternate technologies. In fact, the Common Carrier Bureau did not make any inquiry into the post-dial delay or other characteristics of any proposed use of alternate technologies. Each of the orders cited included a specific statement making approval contingent on findings in the tariff process, and directing LECs to file information with regard to post-dial delay and other issues.[79] Rather than decide these issues, these orders specifically reserved post-dial delay issues for determination in a subsequent proceeding.[80]

74. The focus of each of the Section 214 proceedings was the introduction of interexchange competition into the rural service areas involved, and not the service quality impacts of the use of alternate technologies. The use of alternate technologies was only a side issue in each of the Section 214 proceedings, the primary issue being the provision of centralized equal access. Therefore, we also determine that the purpose of each of the Section 214 proceedings was the approval of the plan for the provision of wiring circuits for access to ICs on a centralized basis. Since the issue of alternate technologies was a side issue specifically reserved for later inquiry, and largely inconsequential to each of the proposed plans, it was not sufficient to otherwise delay implementation of the plans.

IV. ISSUES DESIGNATED FOR INVESTIGATION

A. Accounting of Investment and Expense; Commission Authority To Disallow

75. The *Revised Investigation Order* observed: "If the Commission concludes that the use of alternate technologies is not a reasonable practice, it will be necessary to determine whether any or all of the investment and expense that is associated with the introduction of those technologies should be disallowed for purposes of computing access charges."[81]

76. Several of the BOCs argue that they are entitled to recover their investment in alternative technologies and dispute our authority to disallow any such expenditures from their access rates. Generally, the BOCs argue that they are entitled to recover costs and expenses on property used and useful in furnishing service to the public, and that disallowance is impermissible unless evidence exists that an expenditure was dishonest or obviously wasteful or imprudent. Absent any such affirmative and convincing evidence, the BOCs argue, it would be an error for this Commission to disallow their costs and expenditures for alternative technologies. *See* Direct Cases of NYNEX at 18-20; US West at 13-20; Pacific at 9-12. Neither MCI nor Allnet opposes the BOC arguments against disallowances for their alternaive technologies.

77. A detailed summary of the LECs' responses on the issue of their accounting of 1988 investment and expense and projections for 1989, is not necessary in light of our decision in this investigation, *i.e.*, that the investment in alternate technologies was not unreasonable when made and that the associated costs should be recovered.

B. Reasonableness of Use of Alternate Technologies In Light of Post - Dial Delay

1. Direct Cases

78. NYNEX argues that any post-dial delay caused by the use of alternate technologies is reasonable, and that the use of alternate technologies is consistent with this Commission's policy and prior decisions.[82] NYNEX asserts that rather than setting complicated standards that would be difficult to enforce, this Commission determined that the reasonableness of post-dial delay, as one aspect of the qualitative differences in access afforded ICs, should be measured by the standards established in this Commission's customer perception test for equal access. NYNEX Direct Case at 15. Therefore, NYNEX claims, equal access is achieved if the end user perceives no difference between service available from ICs, implying that if this test is met, whatever post-dial delay that exists would be reasonable. NYNEX contends that any increase in post-dial delay caused by alternate technologies is nevertheless offset by the Section 7 policy to encourage the provision of new technologies and services. *Id.* at 16. NYNEX argues that the Department of Justice (DOJ), in

a report filed with the MFJ Court in 1988, found that the increase in post-dial delay caused by the use of alternate technologies was not substantial and did not degrade service quality to an unacceptable level.[83] In addition, NYNEX claims that alternate technologies are not solely responsible for post-dial delay and that the other factors which contribute to it, such as IC call processing time, must be considered. *Id.* at 6.

79. NYNEX asserts that to the extent an alternate technology meets the requirements of the *MFJ* (*i.e.*, 1+ presubscription, 10XXX dialing, and equal type and quality of service), the equal access requirements of the *MFJ* are satisfied, even if the quality of the access and the type of services provided are not the same as that available with a new switch. *Id.* at 10.[84] NYNEX contends that the access service it provides by way of alternate technologies to other common carriers is substantially equivalent to the service it provides to AT&T, and therefore Section 69.205(a) of this Commission's Rules, 47 C.F.R. § 69.205(a), requires that premium rates apply. *Id.* at 20.

80. In general, the remaining BOCs make the same arguments as NYNEX with regard to post-dial delay and the charging of premium rates for access provided through alternate technologies. *See* Direct Cases of US West at 8-12; SWB at 11-18; Pacific at 15-22; Contel at 11-14. US West also argues that it has not received any complaints regarding post-dial delay from its customers, apparently no complaints have been filed with this Commission, and the ICs have not provided any evidence that any such complaints exist. US West Direct Case at 8. Thus, US West argues, no basis exists for the instant investigation.

2. Oppositions and Comments

81. MCI counters that consumers' perceptions regarding post-dial delay are not relevant in view of this Commission's *800 Access Order* in which we rejected the BOCs' contentions that end users have historically adjusted to increases in call set-up times.[85] In contrast to the BOCs, MCI suggests that this Commission must compare the post-dial delay times of alternate technology architectures to those of electronic switch offices to determine whether alternate technologies provide access which substantially differs from true FGD service provided via electronic switches. MCI Opposition at 27-28.

82. MCI argues that the proper comparison to determine the reasonableness of post-dial delay is between end offices with alternate technologies and end offices with electronic switches. MCI asserts that alternate technologies are not equivalent to true FGD service because they offer service that is substantially inferior to true FGD service. *Id.* at 27. Therefore, MCI argues, premium rates for access provided by alternate technologies are not justified. Moreover, MCI contends that alternate technologies unacceptably increase post-dial delay time beyond what the Bureau contemplated when their use was previously allowed. *Id.* at 37. In addition, Allnet claims that the post-dial delay analyses in the BOCs' direct cases are generally biased, make faulty assumptions, and result in the understatement of call set-up times. Allnet Opposition at 7-12.

83. The other commenters generally concur with the BOCs' position that the post-dial delay caused by alternate technologies cannot be easily determined, and, in any case, is not unreasonable. *See* Comments by NTCA at 4; USTA at 3-4; Illinois at 2, 6. In addition, NTCA claims that small and rural exchange carriers and their subscribers may be disadvantaged if this Commission were to set levels for unacceptable post-dial delay times. NTCA Comments at 4. USTA adds that this Commission has already determined that setting detailed standards for delivery of equal access would be unrealistic given network complexity, the range of capabilities, and the variety of equipment in end offices.[86]

3. Replies

84. NYNEX contends that MCI and Allnet have exaggerated post-dial delay times by presenting misleading data and by relying on a call abandonment study which was based on intra-building calls where end users would expect short post-dial delay. NYNEX Reply at 8-9. Moreover, NYNEX alleges that assumptions which underlie data presented by MCI and Allnet are heavily flawed and biased and tend to exaggerate post-dial delay. NYNEX states that the oppositions gloss over the fact that alternate technologies have enabled millions of customers to choose among ICs and benefit from competition. *Id.* at 4. NYNEX claims that no party has contested its showing that alternate technologies provide the features integral to equal access, service quality that meets this Commission's customer perception test, and a reasonable solution to this Commission's goal of providing equal access to all consumers as expeditiously as possible. *Id.* at 5.

85. NYNEX maintains that the post-dial delay experienced in switches using alternate technologies should be measured by comparing pre- and post-conversion delay times since the end users served by those offices have always experienced longer post-dial delay than those end users served by offices equipped with electronic switches. *Id.* at 6.

86. The remaining BOCs make essentially the same arguments as NYNEX. However, US West further contends that the ICs did not have a choice between receiving equal access through either alternate technologies or electronic switches; rather they could receive it via alternate technologies or not at all. US West Reply at 5. US West says that Allnet and MCI concede that alternate technologies provide equal access since they no longer claim that the access they receive differs from that received by AT&T. *Id.* at 2. In addition, US West claims that there is no basis for distinguishing between its use of alternate technologies and the use of the same technologies by smaller ITCs as contended by NTCA and Iowa Network. *Id.* at 9. Therefore, US West contends, any rules or exceptions this Commission applies to Iowa Network or NTCA (or their members) must apply equally to US West's operating companies. *Id.* at 11.

4. Conclusion

87. In order to resolve the designated issues in this proceeding, it is important to trace the origins of the equal access obligations of the BOCs and the ITCs. As a part of the divestiture of the Bell System, the court that adopted the *MFJ* decreed that the BOCs must provide access services to ICs "which are 'equal in type, quality, and price' to the access service provided to AT&T and its affiliates."[87] That court required, *inter alia*, that "upon bona fide request, every end office shall offer such [equal] access by September 1, 1986."[88] The *MFJ* also stipulated, however, that in offices served by non-SPC switches[89] or offices having fewer than 10,000 lines, "a BOC may not be required to provide equal access through a switch if, upon complaint being made to the Court, the BOC car-

ries the burden of showing that for particular categories of services such access is not physically feasible except at costs that clearly outweigh potential benefits to users of telecommunications services."[90]

88. Pursuant to requests from ICs for equal access connections, the DOJ reported to the MFJ Court that the BOCs had not provided sufficient information to satisfy the cost/benefit requirements of the *MFJ* with respect to their conversion schedules, and that certain alternate technologies were being developed which might be used to provide equal access.[91] After an investigation of several issues, including the BOCs' proposed use of alternate technologies, the DOJ concluded that BOC provision of equal access within two years of MCI's request therefore, March 1, 1988, would satisfy the *MFJ*'s cost/benefit test.[92] The DOJ reported that since data indicated that all ICs received the same quality of access through the use of alternate technologies, and regulatory authorities and consumers had not found the degradation of quality unacceptable, the *MFJ* allowed for the use of these technologies to satisfy the BOCs' equal access obligations. The DOJ stated, however, that "[i]n the event the data show that particular technologies do not provide an acceptable quality of service, the BOCs would be obligated under the decree to propose revised plans to provide equal access in accordance with decree and regulatory standards." DOJ Report at 4 n.8.

89. It is apparent that the DOJ said that the *MFJ* cost/benefit requirements were not initially met by the BOCs, the BOCs were obligated to provide equal access to the ICs by a March 1, 1988 deadline, and the use of alternate technologies could satisfy the *MFJ* obligations of the BOCs. The DOJ did not, of course, purport to determine whether the use of alternate technologies would satisfy the BOC's Communications Act obligations. The BOCs did not choose to contest DOJ's determination. In light of these circumstances, we determine that the BOCs were faced with the choice of either installing electronic switches or alternate technologies. Given that this was the choice faced by the BOCs, the relevant comparison for the purposes of determining post-dial delay and network impact for the BOC parties is between the two options: electronic switches and alternate technologies. Accordingly, US West's assertion that it could have chosen to retain nonelectronic switches without alternate technologies is incorrect.

90. The determination of the proper comparison for the derivation of post-dial delay times resolves many, if not most, of the technical issues at dispute regarding the proper measurement and comparison of these times, and permits a determination of post-dial delay based upon the areas of general consensus in the record. Accordingly, we find that the contribution of post-dial delay by the majority of alternate technologies, in their relevant architectures, is approximately 4.7 to 8.78 seconds more than that contributed by electronic, stored program controlled architectures.[93]

91. In the *800 Order* we found that the 800 access architecture proposed by the BOCs contributed 5.5 to 7.1 seconds of post-dial delay in addition to that currently experienced in the network. We also determined that this amount of post-dial delay was excessive, which resulted in our conclusion that the BOCs should not be authorized to discountinue the existing NXX access service until other network improvements were completed by the BOCs that decreased post-dial delay times to a pre-deployment total. We observe that the range of post-dial delay times using alternate technologies is outside of the range found in the *800 Order*. We similarly conclude that the post-dial delay resulting from the BOC decision to use alternate technologies in lieu of electronic switches is excessive. We do not, at this time, determine what an acceptable range is, since the times in evidence before us are clearly outside of a range which we find acceptable.

C. Impact on End Users, the Network, and ICs

92. The *Revised Investigation Order* directed the carrier parties to discuss the impact of the use of alternate technologies on the network, the end users, and the ICs. In particular, carriers and others were invited to discuss the service options available in electronic offices that are not available in alternate technology offices, and the impact on "the use of calling cards, access to ICs through payphones, implementation of open network architecture, integrated services digital network, line information database, virtual private networks, automatic billing services, custom local area signaling devices, call blocking, call screening, CCSS7, and other technological advances."[94] Carriers were also directed to describe the impact on IC services, FGD signaling and equipment used by ICs and end users.

1. Direct Cases

93. Information was supplied by three of the BOCs with respect to the end user impact of post-dial delay. In addition, US West resubmitted its "customer leaving study" which it had previously filed in the US West Report.

94. NYNEX provided three studies regarding the impact of post-dial delay on customer abandonment and revenue impacts. Among the conclusions reached in NYNEX's studies were that the customer abandonment rate increases with increased post-dial delay. In a study of the delay introduced by Message Command System (MCS), a calling option being tested by NYNEX, the option increased delay times from 7 to 15 seconds. This increase resulted in an increase in customer abandonment rates of 8 to 21 percent, depending upon the customer's perception of the call as being local or long distance, a drop in customer satisfaction of 24 percent, and a revenue loss to the company of 5 percent due to incompleted calls and increased retrials and trouble reports. The memorandum concluded that the post-dial delay resulting from MCS was not acceptable, and recommended against implementation. However, NYNEX's studies also concluded that customer tolerance for post-dial delay increases over time, and increases with the end user's perception of call difficulty. NYNEX Direct Case at Exhibits 15-17.

95. NYNEX says that overlap outpulsing is not available with the alternate technologies, and that direct trunking and alternate routing availability are limited. In addition, alternate technologies will not support open network architecture (ONA), integrated services digital network (ISDN), common channel signalling system 7 (CCSS7), switched access virtual networks, custom local area signalling services (CLASS), Centrex, or custom calling services. NYNEX Direct Case at Exhibit B 13-15.

96. Pacific Bell provided a study of customer complaints after conversion to equal access which concluded that in the two-week period after conversion of a San Jose, California, office, only 0.03 to 0.06 percent of its

customers complained about the increase in post-dial delay. A second study provided by Pacific Bell concluded, however, that customer call abandonment may increase substantially with increased post-dial delay, and cautioned Pacific Bell to be concerned about the effects of increased post-dial delay. The study found that post-dial delay, and the associated call abandonment, generates additional traffic volume through subsequent call attempts, and results in lost revenue to the company. The study indicated that an increase of 2 seconds increased abandonment rates by 5.6 percent in interexchange calls, and that an increase of 6 seconds increased the abandonment rate by 8 percent. Pacific Direct Case at Part III.A. & Attachments.

97. Pacific Bell states that overlap outpulsing is not available in alternate technology offices. It also notes that other characteristics are not available in some offices equipped with alternate technologies, such as two-way trunking and call gapping. Pacific asserts, however, that these limitations are due to technical limitations of the underlying switch, and not the alternate technology. Pacific indicates the existence of the same type of limitations on enhanced functions as is noted by NYNEX, and indicates that some may be supported through continued development of the alternate technology deployed. *Id.* at Part II.B.

98. US West also states that overlap outpulsing and direct trunking are not available with the alternate technologies. US West asserts that there is no impact of alternate technologies on any other services. US West states that service unavailability is due to the underlying switch, not the alternate technology. US West Direct Case at 37-38.

99. With regard to customer impact, SWB merely states that there is no indication of end user dissatisfaction with equal access provided through its alternate technologies, which have been in service for more than a year. SWB Direct Case at 19. SWB's answer with regard to service availability is similar to NYNEX's, except SWB states that some ONA functions will be available in conjunction with its alternate technology deployments. SWB notes that many of the functions included in the Bureau's designated issue are unlikely to be requested given the location of the alternate technology placements, and that some of the services which are not available with alternate technology equipped offices are also not available in conforming offices, such as the 1ESS and 2B ESS. SWB Direct Case at 19-23.

100. Contel asserts that use of alternate technologies allows it to introduce enhanced services to ICs and its subscribers that otherwise would not be available. Specifically, Contel states that alternate technologies enable it to provide such services as 10 digit ANI, ANI for 800 and 900 services, access to operator services, alternate routing, and, in most instances, 10XXX dialing and international direct distance dialing (IDDD). Contel Direct Case at 14-17.

2. Oppositions and Comments

101. MCI claims that end users are adversely affected by alternate technologies because alternate technologies offer fewer service options than electronically switched offices. MCI Opposition at A-9. MCI alleges that end users perceive inferior quality and an increase in post-dial delay in service provided by alternate technologies, citing call abandonment studies submitted by Pacific Bell. *Id.* at B-12. Moreover, MCI claims that alternate technologies inhibit MCI's ability to improve its performance, service, and competitive position. *Id.* at A-10. Allnet, while making the same general arguments as MCI, adds that US West's customer leaving study is inconclusive. Allnet Opposition at 12-14.

102. MCI and Allnet contend that many services available through electronically switched offices are not available through alternate technologies. The parties claim that FGD features unavailable through alternate technologies include: overlap pulsing; direct trunking; support for advanced services, *e.g.*, custom local area signalling services; as well as various other services. MCI Opposition at 29-34; Allnet Opposition at 17-18. MCI further claims that various other services and options are unavailable depending on the specific technology and network architecture involved. *Id.* at 29-34.

103. Other comments generally assert that alternate technologies provided a cost-effective method that allows customers in rural areas served by smaller independent LECs to be able to choose among ICs as well as receive services that would not otherwise be available. In addition, they maintain that alternate technologies have been found by this Commission to supply premium access and serve the public interest. Thus, those commenters contend, the increase in service and IC choices has a positive impact on customers and networks. *See* Comments of ICTC at 3-4; Iowa Network at 3-5; NTCA at 2-3; SRX at 3; USTA at 4-6.

3. Replies

104. NYNEX asserts that allegations that certain network features and services are unavailable through alternate technologies are misleading and in several instances wrong. NYNEX Reply at 11. For example, NYNEX notes that line information database services are available from all NYNEX offices and that NYNEX provides direct trunking in one of its 5XB adjunct offices, contrary to MCI claims. *Id.* at 11-12. NYNEX submits that MCI and Allnet mischaracterize the standard for defining equal access pursuant to the customer perception test as being the perceived increase in post-dial delay in alternate technologies vis-a-vis offices equipped with electronic switches, rather than the difference between ICs with respect to quality of access in a particular end office. *Id.* at 12.

105. US West, SWB, Pacific, and Contel reply that alternate technologies offer the requisite services to qualify as equal access FGD services under Commission policies and decisions and as defined by the MFJ Court. In addition, those carriers suggest that alternate technologies meet the customer perception test and this Commission's goal of making equal access available to all consumers as expeditiously as possible. *See* Replies of NYNEX at 10-12; US West at 22-26; SWB at 2-9; Pacific at 2-7; Contel at 3. Contel further argues that prohibition of or undue restriction on alternate technologies will impede the provision of equal access and its concomitant benefits to customers in rural areas. Contel Reply at 3. Pacific also asserts that direct trunking is available in all alternate technology end offices in SWB's and Pacific's operating territories. Pacific Reply at 18.

4. Conclusion

106. Our determination in the previous section that the relevant comparison for the purposes of measuring BOC post-dial delay is between electronic switches and alternate technology installations is also applicable to any discussion of features which are available with alternate technologies. It is fundamental that alternate technologies, standing alone, serve no function. It is the installation and operation of the technology in a switch which provides the basic capabilities. Therefore, any analysis of the capabilities available with alternate technologies must take into account the architectures which are required for the functioning of the alternate technologies.

107. Our review of the record indicates that several basic functions, which are usually, though not always, available with FGD service provided from end offices equipped with electronic switches, are not available from many of the alternate technology equipped offices. These functions include direct trunking and overlap outpulsing.[95] Furthermore, the lack of direct trunking also precludes provision of alternate routing. In some instances, other features such as two-way trunking and call gapping are also not available. Our purpose in this review, however, is not to determine whether these features are necessary to the provision of FGD, but merely to identify likely service restrictions resulting from the deployment of alternate technologies as opposed to electronic switches.

108. The record reflects that a majority of other functions being provided, or soon to be provided, from electronic end offices are not available from any end office using alternate technologies. As noted above, with few exceptions, ONA, ISDN, CCSS7, switched virtual networks, CLASS, Centrex, and custom calling features are not available from alternate technology end offices. Many of these features, such as ISDN, are becoming necessary to businesses in a competitive environment. Other features, such as custom calling features, are being offered to residential end users on a widespread basis in many service territories. The unavailability of such features, therefore, will assume increasing importance.

109. The US West Report and information provided by other LECs, including SWB, indicate that reliable information regarding customer perceptions was difficult to obtain, and that the changing status of the telecommunications market made additional studies like the Duffy and Mercer Study impractical.[96] In addition, the various customer leaving studies, such as those provided by US West, and other customer impact studies, such as that provided by SWB, provide questionable and inconclusive results.[97] The infrequency of customer complaints is not sufficient to justify an inference that post-dial delay does not significantly impact calling characteristics. We also note comments made by the LECs in this proceeding that end users are not likely to realize which companies or functions contribute to the post-dial delay, when arguing why IC times should be included.[98] These remarks indicate that end users are not likely to understand the source of post-dial delay, and most likely will not attribute the absence of features available elsewhere in the system to the use of alternate technologies. Therefore, post-dial delay may have some impact upon interexchange competition, because customers may attribute increased post-dial delay to particular IXCs. Even if the record had demonstrated that the post-dial delay attributable to the use of alternate technologies has no impact upon calling patterns, we could not conclude that post-dial delay does not matter. As we found above (para. 91), increases in post-dial delay associated with alternate technologies is unacceptably high from the point of view of telephone users. In addition to disconnecting, many users would become annoyed before they actually abandon the call attempt. Providing end users with service that is satisfactory to them is clearly one of the ultimate goals of the Act and of the more specific rules and policies this Commission has adopted in the past.

110. We do find that a surrogate test of abandonment rates is useful. The study of abandonment rates has the advantage of providing us with information about customer perception that customers cannot themselves discern, especially in light of the admission by the LECs that customers cannot distinguish the cause of post-dial delay.[99] These studies have the added advantage of predicting the impact of the use of alternate technologies on the network, and the impact on rates and revenues.

111. Additional call abandonment studies were provided by Pacific and NYNEX. Our review of this new information in the record leads us to conclude that user impact studies, such as those supplied, can be good surrogates for actual customer perception tests, and actually may be much more accurate than actual customer surveys. Post-dial delay appears to contribute, as expected, to end user dissatisfaction. It may also lead to negative revenue impacts for the LECs and ICs as call volumes increase (due to increased retrials and trouble reports, for example), and after call abandonment.

112. We find that these revenue impacts appear to be more significant than the "customer leaving" problem initially identified by MCI in this investigation. The relevance of these studies to network quality and impact on users and the network is therefore significant.

D. Duration of Alternate Technology Use and Impact of Permanent Use on Network

113. The *Revised Investigation Order* also required the LEC parties to describe their plans for replacing alternate technology switches. Paragraph 29(c) said:

> To what extent is the use of alternate technologies temporary? What impact would the permanent use of alternate technologies have on the network, particularly with regard to network efficiency and service quality?[100]

1. Direct Cases

114. NYNEX indicates that NYNEX's placement of these technologies is temporary. The NYNEX alternate technology switches will be replaced with electronic switches as soon as possible, but no later than 1992. NYNEX asserts that these technologies provide inferior service, and are not cost effective in the long term, but that NYNEX had no choice but to use them in order to meet the schedule imposed by the Department of Justice requirement to provide equal access in all nonconforming offices no later than March 1988. NYNEX Direct Case at 22-23.

115. NYNEX provides studies which show that network delays, like those caused by alternate technologies, substantially increase customer call abandonment, resulting in revenue losses for the company. NYNEX also lists the

service difficulties caused by the use of alternate technologies, citing services which are unavailable to end users. *Id.* at B-24.

116. In its direct case US West says that "no technology is considered permanent," but it does not commit to replacement, nor does it indicate a schedule or continuing evaluation criteria with respect to replacement. US West Direct Case at 39. However, in an *exparte* presentation on May 31, 1990, US West claimed that it plans to replace by the end of 1991 switches in 17 of 77 US West end offices that utilize alternate technologies. Beyond that, US West asserts, the timing of end office switch replacement is determined by by factors such as market demand, maintenance costs, and costs of field support.[101]

117. SWB asserts that its use of these technologies is purely temporary, affects a minimum number of offices, and that 10 of the total 26 end offices where alternate technologies were used have already been replaced with electronic switches. SWB asserts that the decision to use these was based purely on a cost/benefit analysis, but that all will be replaced. SWB Direct Case at 24. In a letter describing an *ex parte* presentation made on October 27, 1989, SWB stated that it will replace 22 of 26 adjunct-equipped offices with electronic switches by the end of 1991.[102]

118. In its Direct Case, Pacific asserts that these technologies are permanent additions to the network. Pacific Direct Case at Part II.C. However, in an *ex parte* presentation on October, 27, 1989, Pacific indicated that the California Public Utilities Commission approved a $404 million expenditure to replace outdated mechanical switching equipment. Pacific stated that 38 of its end offices were equipped with adjuncts at that time, and projected that all mechanical switches will be replaced by the end of 1992.[103]

119. Contel asserts that its use of alternate technologies allows it to provide equal access on an economical basis prior to switch replacement. Contel Direct Case at 21. Contel indicates its intention to replace all of its mechanical switches with electric switches and projects this will be accomplished in approximately three years in Indiana. Contel, by contrast, does not commit to a replacement schedule for its Iowa offices.

2. Oppositions and Comments

120. MCI opposes the use of alternate technologies because the performance and quality they offer are "substantially inferior to FGD access provided by fully converted electronic offices." MCI Opposition Summary at 1. MCI asserts, therefore, that this Commission should set a date certain for switch replacement. *Id.* MCI submits that application of non-premium rates for alternate technology access will provide an incentive for LECs to phase out alternate technologies and encourage switch replacement. *Id.* at A-18.

121. Allnet contends that permanent or long-term use of alternate technologies is undesirable because those technologies increase costs for ICs as ICs are required to compensate for the lower quality access in order to maintain and improve the quality of end-to-end service. Allnet Opposition at 18-19. However, Allnet concludes that temporary use of alternate technologies may be appropriate if the technologies are not considered to provide equal access and are priced below premium rates. *Id.* at 26.

122. Other commenters generally support the unrestricted use of alternate technologies, but, with the exception of SRX and USTA, distinguish the smaller ITCs from the BOCs for the purposes of permanent versus temporary use. These commenters emphasize the economic ability of the ITCs to convert to electronic end offices, and the desirability of encouraging extension of equal access to rural areas. *See* Comments of ICTC at 3-4; USTA at 6-7.

3. Replies

123. US West, based on its cost/benefit analysis, *infra*, claims that switch replacement at certain offices could not have been cost-justified because costs outweighed potential benefits. US West Reply at 5 n.11. Thus, US West asserts the choice was between providing equal access via alternate technologies or not providing equal access at all. *Id.* at 8. Accordingly, US West disputes arguments that LECs should be required to replace switches to improve equal access and questions whether this Commission possesses the authority to require switch replacement.[104] In addition, US West asserts there is no basis to differentiate between its use of alternate technologies and the use of the same technologies by Independent LECs. *Id.* at 9.

124. NYNEX reiterates its commitment to switch replacement. However, due to a myriad of factors, NYNEX urges this Commission not to adopt deadlines for replacing alternate technologies with electronic switches. NYNEX Reply at 16.

125. Pacific submits that questions regarding switch replacement should be left to LECs which are better equipped to evaluate the many factors influencing that decision. Pacific Reply at 29.

4. Conclusion

126. A review of the evidence demonstrates that a majority of the LEC parties clearly intend to use alternate technologies on only a temporary basis. NYNEX specifically states that all of its alternate technologies will be replaced within three years. The information supplied by SWB and Pacific indicates that their replacement schedules will be completed within three years, and Contel's schedule for switch replacement in Indiana is on the same track. Although US West says that its use is "temporary," a review of all of its pleadings indicates that its use of alternate technologies is of indefinite duration and we therefore view its planned use of such technologies to be, for all practical purposes, permanent.

127. As we discussed in Section IV.B, *supra*, under the *MFJ* the BOCs must provide FGD. Therefore, we specifically reject US West's arguments that end offices which received alternate technologies would otherwise have received no equal access capabilities. We note that the DOJ concluded that the BOCs had not met the *MFJ* cost/benefit test which permitted the modification of the equal access requirements.[105] The BOCs did not contest that conclusion. Unable to support the cost/benefit analyses required by the *MFJ*, the BOCs would have had to convert these offices even in the absence of alternate technologies.

128. A review of the information regarding the number of lines affected indicates that a low number of offices and lines are affected as compared to the total number of offices or lines in each of the BOCs' systems. The data, in combination with the cost/benefit information supplied by NYNEX, would indicate that not only is the installation

of electronic switches in the economic interest of the BOCs, but that the initial cost of electronic switches would have a minimal impact on the rates of all of the BOCs' end users.

E. Cost/Benefit Analysis of Alternate Technologies

129. The *Revised Investigation Order* also required the LEC parties to describe the cost/benefit analysis that led to the decision to use alternate technologies. Paragraph 29(D) asked:

> What are the differences in cost to the BOC of using alternate technologies instead of switch replacement?[106]

1. Direct Cases

130. The LECs, with the exception of NYNEX, assert that alternate technologies are less expensive than switch replacement. Direct Cases of Pacific at Parts II.D. & III.C.; SWB at 24; and US West Supplement to Direct Case at 4-5.

131. NYNEX provides the Bureau with extensive costing analyses concerning the use of alternate technologies versus switch replacement, including comparisons of initial capital cost, depreciation expense comparisons, other maintenance and expense comparisons, and net present value comparisons. The initial capital cost of switch replacement ranges from $282 to $350 per line, compared to $2 to $14 per line for Tandem A and LEAS, or $34 to $45 per line for the adjuncts, such as Digitech and NAC. With the exception of LEAS in a 3ESS office, however, the depreciation expense associated with switch replacement is lower than for the use of alternate technologies, by as much as $1.487 million per year. The annual maintenance expense for switch replacement is also lower than for alternate technologies, by as much as $0.648 million. Pacific Direct Case, Exhibit C at 4-13.

132. NYNEX asserts that the proper method for evaluating the cost effectiveness of the alternatives is to examine the incremental cost of switch replacement versus the incremental cost of using alternate technologies. NYNEX's analysis demonstrates that switch replacement is the most cost effective way by which to provide equal access. The incremental cost of switch replacement is only $2 to $5 per line, while the incremental cost of alternate technologies is $26 to $28 per line. *Id.*

133. US West asserts that the net present value of using the alternate technology LEAS in SXS offices is $227.4 million, versus -$651.8 million for a digital replacement. Supplement to Direct Case of US West at 4.

134. In its analysis, SWB concluded that the net present value of the use of Digitech was $10,800 better, per office, than that for switch replacement. SWB concludes that the net present value of LEAS is $53,100 higher, per office, than switch replacement. SWB Direct Case at 32-38.

135. Pacific estimates that the difference in net present value between switch replacement and the use of NAC favors NAC in the range of $.363 million to $1.087 million per end office. Pacific Direct Case at Part III.C.

2. Oppositions and Comments

136. MCI maintains that the BOCs' comparison of alternate technology costs and replacement costs is misleading because installations of electronic switches in BOC end offices is inevitable. Thus, MCI argues, the cost of installing alternate technologies could have been avoided altogether. MCI Opposition at A-20. MCI asserts that the likelihood of the BOCs saving money in the long run by their use of alternate technologies is remote. Unless favorable tax treatment and lower prices for electronic switches become available, MCI contends the BOCs will have spent more money deploying alternate technologies than if they replaced switches. *Id.* at 2-21.

137. Allnet challenges the BOCs' cost analyses, labeling them incomplete or flawed. Allnet Opposition at 19. Allnet contends that only the time value of money saved by deferring switch replacement can be compared to the additional near-term investment and maintenance for alternate technologies. *Id.*

138. Other comments generally support BOC analyses that indicate alternate technologies are less expensive than switch replacement. These commenters contend that the reasonable cost of alternate technologies allow ITCs to rapidly implement equal access, which would be delayed if the more expensive switch replacement were required. *See* Comments of ICTC at 4; Iowa Net at 11; NTCA at 4; SRX at 2-3; USTA at 7.

3. Replies

139. US West argues that the opposition has made no showing that any benefits of switch replacement are justified by their costs. US West Reply at 17.

140. Pacific argues that the comparison of the time value of money and additional near-term investment for alternate technologies must be considered in light of the exigencies surrounding the decision to install alternate technologies rather than replace switches. Pacific Reply at 26. Pacific extolls the integrity of its economic study and stands by its conclusion that alternate technologies provide the most cost efficient choice. *Id.* at 27.

4. Conclusion

141. Most LECs acknowledge that the replacement of alternate technologies with electronic switches is inevitable. Claims that any BOC might retain alternate technology switches for years to come are not plausible. The eventual or near term replacement of alternate technologies has a direct impact on the calculation of the comparative net present values of the investment options facing the LECs. Our review, discussed in more detail below, indicates that the replacement of older electromechanical end offices with electronic end offices is more cost effective than the installation of alternate technologies when switch replacement is scheduled in the short term. Due to the lower initial investment cost of alternate technologies, however, their use may be less expensive whenever switch replacement is not scheduled in the short term.

142. An examination of the information provided by NYNEX, and a comparison of this information to that provided by the other BOCs, reveals the apparent inconsistencies in their reported cost computations. NYNEX performs a true net present value analysis, which includes depreciation expense, and estimates of both the internal and external maintenance expense associated with the equipment being analyzed. Depreciation expense properly reflects the effect of early retirement of the alternate technology and original switching equipment upon the inevitable replacement with an electronic switch.[107] The

other BOCs focus either solely on cash expenditures or include the depreciation expense related to the alternate technology itself, and not the underlying switch, do not always include the impact of internal maintenance expenses, and may not be reflecting early retirements. Thus it is apparent that NYNEX provided the most extensive and comprehensive information from which a reliable conclusion could be drawn.

143. US West provides no information regarding the use of NAC, which is much more expensive than LEAS and requires capital expenditures. US West also fails to include any of the depreciation expense or maintenance expense associated with the continued use of the switch in which LEAS is installed, contrary to both the *Revised Investigation Order*, and accepted accounting practices. US West concedes that its analysis is of doubtful value.[108]

144. SWB's analysis includes comparative depreciation expense, but does not seem to include all of the maintenance expense associated with the use of alternate technologies, specifically any expenses associated with in-house maintenance as opposed to externally contracted maintenance. SWB's analysis relies on a hypothetical "average office," so that the comparative analyses may favor switch replacement in some situations, and be even more favorable to alternate technologies in other situations. Southwestern's analysis appears, however, fairly complete and in compliance with the *Revised Investigation Order*.

145. Although Pacific's analysis includes depreciation expense and maintenance expense in its analysis, it may not include the depreciation related to the underlying 5XB switch, which is necessary for a proper evaluation. Inclusion of that depreciation expense, or accelerated retirement expense related to future replacement, could easily cause Pacific Bell's analysis to yield the same results as NYNEX's.

146. Based upon our review of the information provided, we conclude that the use of alternate technologies, absent extenuating circumstances, is not as cost efficient as switch replacement. In making this determination we rely primarily on the extensive and comprehensive information supplied by NYNEX. Even if the BOC decisions to use alternate technologies in lieu of replacing electromechnical switches with electronic switches had resulted in some net cost saving, a significant cost saving would be required to offset the differences in quality of service that we have found. A reasonable cost/benefit analysis, that reflected the interests of all end user customers, would not lead to the conclusion that the use of alternate technologies is preferable to the installation of electronic switches.

147. The BOCs apparently concluded that the use of alternate technologies was the only feasible means of meeting a deadline that they had not anticipated. In these circumstances, the initial decision to use alternate technologies was not an unreasonable practice and there is accordingly no reason to disallow that investment as imprudent. The continued use of technologies that degrade the quality of service beyond a reasonable transition period is, however, an unreasonable practice.

F. Section 202 (a) and Preferences Between Localities [109]

148. The *Revised Investigation Order* observed that the use of electronic switches in some end offices and alternate technologies in other end offices might subject end users in some offices to unjust or unreasonable prejudice or disadvantage in violation of Section 202(a) of the Communications Act.[110] Parties were directed to discuss that issue.

1. Direct Cases

149. NYNEX maintains that identical types and quality of service are not required by the Act, and that any discrimination that exists as a result of alternate technologies is neither unjust nor unreasonable. NYNEX Direct Case at 17. NYNEX emphasizes that its deployment of alternate technologies was only for the purpose of meeting its equal access obligations under the *MFJ*, and posits that the interim basis of the deployment underscores that NYNEX has not acted unreasonably or in a discriminatory manner. *Id.* at 18.

150. All of the BOCs agree that the use of alternate technologies, as opposed to switch replacement, does not give any class of persons or any locality an unjust or unreasonable disadvantage in violation of Section 202(a) of the Act. *See* Direct Cases of SWB at 25-26; US West at 40; Pacific at Part II. SWB adds that simple economics dictate that end offices serving greater numbers of end users be upgraded generally sooner that those which serve low numbers of end users. SWB Direct Case at 25. Moreover, SWB claims that if LECs were required to provide all of their end users with the exact same service through the same technologies, innovation would stagnate and intrastate end users would ultimately be burdened with exorbitant rates to cover the expenses and costs of upgrades benefiting only a few end users. Thus, SWB concludes that such a requirement is not in the public interest. *Id.* at 26.

2. Oppositions and Comments

151. MCI asserts that alternate technologies are predominantly used for end offices located in rural areas. MCI Opposition at 8. Consequently, MCI posits that residential and small business end users in these areas are subject to increased post-dial delay and deprived of advanced services available through electronically switched offices. *Id.* Thus, MCI argues that these customers suffer an unjust and unreasonable prejudice or disadvantage under the Act. *Id.* at A-23. To encourage correction of this problem, MCI states that the BOCs should not be allowed to charge premium rates for access provided through alternate technologies. *Id.* at 8.

152. MCI also argues that the issue is not customer perception, but whether the provision of access through alternate technologies results in unreasonable or discriminatory practices in violation of the Act.

153. SRX and USTA voice support for the overall position of the BOCs. SRX Comments at 3-4; USTA Comments at 7-9. Other commenters generally argue that alternate technologies are especially important for smaller ITCs, particularly those serving rural areas. In essence, these commenters contend that prohibiting the smaller ITCs from utilizing alternate technologies would severely impede the introduction of equal access, with its attendant benefits, in rural areas, thereby unreasonably disadvantaging persons and businesses residing there. Commenters other than SRX and USTA emphasize that smaller ITCs are treated differently from the BOCs for purposes of equal access. *See* Comments of ICTC at 3-4; Iowa Network at 5-8; NTCA at 3-4.

3. Replies

154. NYNEX responds to contentions that LECs have engaged in undue locality preferences, by stating that 55 percent of alternate technology offices in the New York Metropolitan and Eastern Massachusetts LATAs are in the most densely populated LATAs in the NYNEX region. NYNEX Reply at 3. NYNEX notes that in the least densely populated states in its region (Maine, New Hampshire, and Vermont), only nine offices are alternate technology equipped. *Id.*

155. US West maintains that use of alternate technologies does not discriminate against rural customers in violation of the Act, and in any event that a discrimination argument is irrelevant in this proceeding. US West Reply at 14. US West asserts that MCI's intepretation of equal access discrimination would mandate that LECs could never modernize and avoid discrimination unless the LECs simultaneously installed the same equipment and software in every end office. Therefore, US West argues, such a requirement would retard modernization of LEC networks. *Id.* at 16-17.

156. Pacific contends that many considerations go into its alternate technology deployment decisions, which have resulted in alternate technologies being installed in metropolitan and rural offices alike. Pacific Reply at 21.

4. Conclusion

157. We agree that the Act does not require that new technologies, or any technologies, be installed simultaneously everywhere in a LEC's network. The issue is, however, the assurance of a basic level of quality of service throughout the network. We anticipate that as improvements and innovations are developed and implemented, the decision to install these in different locales will be based upon a number of determinations, including economics and demand. Nevertheless, when the standard for service achieves a certain level, the issue may become whether an area will be upgraded to the same quality of service which is the standard for the majority of the network. A BOC decision to continue network enhancements in many areas, while permanently abandoning a few areas to outdated technologies and a lower standard of service, would result in subjecting some localities to undue prejudice for purposes of Section on 202(a) of the Act.

158. We recognize that electronic switches are generally not designed to serve less than a certain number of access lines and, therefore, that deployment of electronic switches in certain smaller end offices may not be feasible. *See* para. 188. However, the fact that many of the offices using alternate technologies appear to be rural offices does not, in itself, establish that this is the case for the offices in question. In fact, the record suggests that carriers may have unduly disadvantaged some localities for reasons not directly related to size. The record reflects that numerous switches were replaced with electronic switches in offices which are smaller than the offices which received alternate technologies. These offices include both rural and urban offices.

G. Section 202 (a) and Discrimination in Interstate / IntraLATA Service

159. The *Revised Investigation Order* noted that the BOCs do not use the alternate technologies for any of the BOC intraLATA traffic and that some of the BOC intraLATA traffic is interstate communication.[111] The BOC parties were directed to comment[112] on the possibility that this disparity constitutes unjust or unreasonable discrimination between the BOCs and the ICs.

1. Direct Cases

160. NYNEX asserts that the *MFJ* does not require the BOCs to use alternate technologies to process their own intraLATA traffic, or that the post-dial delay of such calls be equal to that of post-dial delays for IC intraLATA traffic. NYNEX Direct Case at 11. NYNEX states that the MFJ Court explicitly recognized that there would be inequalities betweeen the ICs and the BOCs with regard to intraLATA traffic, and found that, given the circumstances, the differences in post-dial delay times were reasonable.[113] NYNEX claims that the *MFJ* only requires that the quality of access provided be equal among ICs for their intraLATA and interLATA traffic, and that this requirement is met since all IC traffic is processed through the same technologies. *Id.* NYNEX further argues that the Commission should refrain from placing any intraLATA access requirements on the BOCs that would be inconsistent with those enumerated by the MFJ Court, especially since the amount of interstate, intraLATA traffic is negligible. *Id.* at 18.

161. The remainder of the direct cases addressing this issue generally concur with NYNEX's position. *See* Direct Cases of SWB at 26-29; US West at 41; Pacific at Part II. In addition, US West challenges as inaccurate the assumption that access time provided to ICs is substantially longer than the access time it provides to itself. US West Direct Case at 41.

2. Oppositions and Comments

162. MCI argues that discrimination by the BOCs in favor of their own services is unjust and unreasonable because switch replacement would eliminate the inequality in interstate, intraLATA service. MCI Opposition at A-23 to A 24. MCI states that since the BOCs compete with ICs for interstate, intraLATA services, inequality in access gives the BOCs an unjustified competitive advantage over ICs. *Id.* MCI also claims that the additional delay experienced by the ICs gives end users the perception that IC services are inferior. *Id.*

163. Allnet asserts that reliance by the BOCs' direct cases on MFJ Court decisions regarding intraLATA equal access is misplaced. Allnet Opposition at 22. Allnet submits that the *MFJ*'s failure to require intraLATA 1+ presubscription is not a defense against the Communications Act prohibition on unreasonable discrimination. *Id.* Allnet claims that the basic goals of this Commission's access charge and pro-competitive policies mandate that the LECs provide intraLATA, interstate 1+ equal access to all competitors. *Id.* at 24.

164. Iowa Network argues that this Commission should require the BOCs to provide full equal access, which is available with LEAS-type technology through interstate, intraLATA presubscription. Iowa Network Comments at 9-11. Iowa Network further argues that the failure of the BOCs to route their own traffic through LEAS and presubscribe constitutes unreasonable discrimination under Section 202(a) of the Act. *Id.* The remaining commenting parties do not address this issue.

3. Replies

165. NYNEX disputes assertions that the BOCs are required to provide access equal to what they provide themselves for interstate, intraLATA service, and contends that the *MFJ* contains no such requirements. NYNEX Reply at 13. Moreover, NYNEX states that the MFJ Court has refused to require the BOCs to provide presubscription for intraLATA traffic. *Id.*

166. US West states that it would be inappropriate to consider Allnet's claim that intraLATA interstate presubscription 1+ service should be extended to the ICs, claiming that the assertion is irrelevant to the instant ivestigation. US West Reply at 57. US West observes that even electronically switched BOC end offices never provided any such presubscription service. *Id.* US West suggests that, in any event, the issue is more appropriately left to the states. *Id.* SWB's position parallels that of US West on this issue. *See* SWB Reply at 14.

4. Conclusion

167. The issue of presubscription is outside of this investigation. Our review of the record discloses, however, that the difference between the post-dial delay times for intraLATA interstate traffic processed to the BOCs' own network is substantially lower than that handed off to the IC's network. This substantial disparity, without explanation, would constitute a prima facie showing of impermissible discrimination.

168. The BOCs may not be required by the *MFJ* to provide equal access between themselves and the ICs, but that is not determinative of an unjust discrimination showing under the Act. Whether the states permit intraLATA competition is of no relevance either, since our jurisdiction is only over the interstate calls. No such restriction exists on the federal level.[114]

169. Although the practice of routing IC interstate intraLATA calls through the alternate technologies, but not the BOCs' own calls, would seem to be unjustly discriminatory, it represents a minor amount of traffic. In addition, insofar as we determine that the use of alternate technologies on a temporary basis is reasonable, we also determine that a temporary disparity between IC access and the relatively small amount of BOC interstate traffic does not constitute unreasonable discrimination. Failure to eliminate this disparity within a reasonable period of time would, however, constitute unreasonable discrimination. *See* para. 203.

H. Premium Rates and Alternate Technologies

170. The BOCs have treated alternate technology access service as premium access service for purposes of billing the ICs. The *Revised Investigation Order* noted that ICs would be entitled to a refund if such access were deemed to be nonpremium access for purposes of the Part 69 access charge rules. The BOCs were directed to comment.

1. Direct Cases

171. NYNEX asserts that to the extent an alternative technology provides 1+ presubscription, 10XXX dialing, and equal type and quality of service, the equal access requirements of the *MFJ* are satisfied, even if the quality of the access and the type of services provided are not the same as that available with a new switch. NYNEX Direct Case at 10. NYNEX contends that the access service it provides by way of alternative technologies to other common carriers is substantially equivalent to the service it provides to AT&T, and therefore Section 69.205(a) of this Commission's Rules, 47 C.F.R. § 69.205(a), requires that premium rates apply. *Id.* at 20.

172. The remaining direct cases generally make the same argument as NYNEX, and agree that alternate technologies provide equal access, FGD service, and an acceptable level of service quality. Therefore, the direct cases argue, since the ICs have been receiving the benefits of premium access through alternate technology, it is appropriate that they be charged premium rates. *See* Direct Cases of SWB at 12-13; US West at 42; Pacific at 32-33; Contel at 21.

2. Oppositions and Comments

173. MCI alleges that the service provided through alternate technologies is substantially inferior to true FGD access provided through electronic switches. MCI Opposition at 45. MCI states that this Commission has held that the BOCs cannot charge premium rates for access which fails to provide features and services equivalent to true equal access.[115] MCI further alleges that since alternate technology offices lack the capability to provide equal access, Section 69.205(a) of this Commission's Rules prohibits LECs from the charging premium rates for access from alternate technology offices. *Id.* at 46. Therefore, MCI argues, the BOCs should be precluded from charging premium access rates for inferior alternate access. *Id.* Moreover, MCI states that this Commission has never ruled on the reasonableness of BOC rates for alternate technology access service and has never determined that premium FGD rates may be assessed for these services. *Id.* at 40-41.

174. Allnet contends that this Commission should require the LECs to charge a rate lower than premium charges and higher than non-premium charges, to reflect the lower quality of access available through alternate technologies. Allnet Opposition at 26. Allnet asserts that true equal access must include intraLATA 1+ interstate service, and that non-premium charges should be assessed upon 10XXX FGD intraLATA, interstate traffic whenever 1+ intraLATA equal access is not provided. *Id.*

175. Iowa Network states that FGD service provided by ITCs through INAD's CEAS tandem arrangement is equal access and should be billed at premium rates. Iowa Network Comments at 7. No other comments specifically address the issue of premium rates for alternate technology access.

3. Replies

176. NYNEX responds to MCI's contention that provision of FGD service is a condition precedent to the charging of premium rates for FGD access, stating that Section 69.205(a) only requires that access provided to other common carriers be substantially equivalent to that provided to AT&T. NYNEX Reply at 14. NYNEX asserts that alternative technologies meet this standard for both intraLATA and interLATA service. *Id.* In the event it were not allowed to charge premium rates, NYNEX claims that the resulting revenue shortfall would only be recouped by charging higher rates for FGD access to electronically switched offices, making any discounted price for access via alternate technologies illusory. *Id.* at 15.

177. SWB, US West, Pacific, and Contel generally make the same argument as NYNEX regarding the charging of premium rates for access provided through alternate technologies. *See* Replies of SWB at 6; US West at 3-4; Pacific at 23; Contel at 6-7.

4. Conclusion

178. The premium and nonpremium categories in the access charge rules were established as a means of offsetting the competitive disadvantage that ICs other than AT&T suffered because equivalent access was not available to those other ICs. In these circumstances, it would not be appropriate to order a refund of any of the past "premium" access charges for access service from alternate technology offices because there was no difference between the quality of access provided to AT&T and its competitors. As we discuss below, however, it may be unreasonable to continue to charge the full rate for access in alternate technology end offices after December 31, 1992, due to the degraded service quality provided in those offices.

I. Contel Use of Alternate Technologies

1. Direct Case

179. Contel considers use of alternate technologies to be full equal access and an alternative to switch replacement. Contel asserts that FGD access provided in electromechanical end offices through alternate technologies is provided on an equal basis to all ICs, and therefore constitutes equal access. Therefore, Contel concludes, FGD services provided through alternate technologies should be assessed premium rates. Contel Direct Case at 2.

180. Contel contends that the Commission recognized differences between the BOCs and ITCs in establishing ITC conversion requirements, and posits that ITCs should receive similar treatment with respect to their use of alternate technologies. *Id.* at 3 (citing *Phase III Order).* Contel asserts that its centralized equal access (CEA) arrangements utilize Northern Telecom's LATA Equal Access System (LEAS) alternate technology at centralized access tandem switches to provide FGD services to ICs connecting to rural digital and analog switches through those alternate technology-equipped tandems. *Id.* at 4. Contel states that its companies have been authorized to implement CEA arrangements and are doing so on their own initiative in Indiana and Iowa where no bona fide requests for equal access were received by Contel from any IC. *Id.*

181. Contel contends that the *Phase III Order* recognized differences between the BOCs and the ITCs with respect to financial resources, markets served, and end office switch technologies employed. Contel notes that the Commission ruled that non-GTE ITCs' electromechanical switches are not subject to a fixed conversion schedule, and ITC end offices equipped with stored program control (SPC) switches must be converted within three years after a reasonable, bona fide request for equal access from an IC. *Id.* at 6. Contel submits that alternate technologies have enabled ITCs to initiate innovative equal access arrangements, in the absence of specific IC requests for equal access, on a cost effective basis for electromechanical as well as SPC equipped end offices. *Id.* at 7. Contel further submits that its CEA arrangements are specifically designed to attract competing ICs to rural markets currently lacking the benefits of equal access. *Id.*

182. Contel argues that due to constraints in capital spending and the relatively small subscriber markets of most ITCs, many ITC subscribers, especially in rural areas, would not realize the benefits of equal access for many years if ITCs are restricted in their use of alternate technologies. *Id.* Contel asserts that many ICs are reluctant to trunk directly to ITC rural end offices given the expense involved in establishing points of presence in exchanges which serve relatively few access lines. *Id.* at 8. Thus, Contel contends, ICs generally do not consider rural areas viable markets and rarely submit equal access requests for ITC end offices, which accounts for the relatively low conversion rates for ITC end offices. *Id.* Moreover, Contel asserts, the use of alternate technologies at the tandem instead of switch replacement allows it to provide FGD services from electromechanical end offices where switch replacement remains economically infeasible. *Id.* at 9. Contel therefore concludes that the Commission should find the use of alternate technologies by ITCs to be reasonable and in the public interest. *Id.* at 21.

183. Contel asserts that use of alternate technologies allows it to introduce enhanced services to ICs and its subscribers that otherwise would not be available. Specifically, Contel states that alternate technologies enable it to provide such services as 10-digit Automatic Number Identification (ANI), ANI for 800 and 900 services, access to operator services, alternate routing, and, in most instances, 10XXX dialing and international direct distance dialing (IDDD). *Id.* at 14-17. Contel maintains that any detriment in the form of post-dial delay or service difference of access provided through alternate technologies vis-a-vis access provided through fully electronic switches is outweighed by the benefits of new and enhanced services that alternate technologies will provide to ICs and end users.[116]

184. Contel contends that once its electromechanical switches are upgraded, it will no longer need alternate technologies to provide equal access. Contel projects that routine switch replacements will obviate the need for alternate technologies at its access tandems in Indiana within three years of the alternate technologies deployment. With respect to Iowa, Contel does not commit to a specific switch replacement schedule, but asserts that switch upgrades in Iowa over the next several years will render alternate technologies unnecessary in that state. *Id.* at 18.

185. With respect to interstate intraLATA calls, Contel claims that any such traffic within its CEA arrangements is routed over exchange carrier network facilities. Contel maintains that the appropriateness of these arrangements is not an issue related to ITC use of alternate technologies and is beyond the scope of this investigation. *Id.* at 20.

2. Oppositions and Comments

186. The two parties who filed oppositions to the LECs' direct cases in this proceeding, MCI and Allnet, did not directly address the issue of ITC use of alternate technologies. Commenters, on the other hand, generally voiced their support of ITC use of alternate technologies.

187. SRX and USTA voice support for the unrestricted use of alternate technologies by all LECs. SRX Comments at 3-4; USTA Comments at 7-9. Other commenters gen-

erally argue that alternate technologies are especially important for smaller ITCs, particularly those serving rural areas. In essence, these commenters contend that prohibiting the smaller ITCs from utilizing alternate technologies would severely impede the introduction of equal access, with its attendant benefits, in rural areas, thereby unreasonably disadvantaging persons and businesses residing there. Commenters other than SRX and USTA emphasize that smaller ITCs are treated differently from the BOCs for purposes of equal access, and suggest that the distinction between the BOCs and the ITCs should be a consideration with regard to the reasonableness of the use of alternate technologies. *See* ICTC Comments at 3-4; Iowa NSC Comments at 5-8; NTCA Comments at 3-4. Commenters also express concern regarding the economic ability of the ITCs to convert to electronic end offices, and stress the desirability of encouraging extension of equal access to rural areas. *See* ICTC Comments at 3-4; USTA Comments at 6-7.

188. Commenters generally assert that alternate technologies provide a cost-effective method that allows customers in rural areas served by smaller independent LECs to be able to choose among ICs as well as receive services that would not otherwise be available. These commenters contend that the reasonable cost of alternate technologies allows ITCs to implement equal access rapidly, which would be delayed if the more expensive switch replacement were required. *See* ICTC Comments at 4; Iowa NSC Comments at 11; NTCA Comments at 4; SRX Comments at 2-3; USTA Comments at 7. In addition, they maintain that the Commission has found that alternate technologies supply premium access and serve the public interest. Thus, these commenters contend, the increase in service and IC choices has a positive impact on customers and networks. *See* ICTC Comments at 3-4; Iowa NSC Comments at 3-5; NTCA at 2-3; SRX Comments at 3; USTA Comments at 4-6.

3. Replies

189. Contel notes that the commenters, including ITCs and telephone company associations, support the use of alternate technologies for the provision of equal access. Contel Reply at 2. Contel contends that the ICs that filed oppositions to direct cases in this proceeding narrowly focus on BOC use of alternate technologies and BOC compliance with MFJ obligations, and do not object to ITC deployment of alternate technologies. *Id.* at 3. Generally, the remainder of Contel's reply reiterates its direct case, concluding that prohibition or undue restriction of ITC use of alternate technologies will impede the provision of equal access and its concomitant benefits to customers in rural areas.

190. US West claims that there is no basis for distinguishing between its use of alternate technologies and the use of the same technologies by smaller ITCs, as contended by NTCA and Iowa NSC. US West Reply at 9. Therefore, US West contends, any rules or exceptions the Commission applies to Iowa Network or NTCA (or their members) must apply equally to US West's operating companies. *Id.* at 11. The remaining replies do not specifically address Contel's direct case.

4. Conclusion

191. On August 7, 1990, Contel entered into a merger agreement with the GTE Corporation. The merger was approved by federal and state regulatory agencies, as well as by foreign regulatory bodies pursuant to applicable laws or regulations.[117] This Commission was notified that all acts necessary to give effect to the transfers of control to GTE of the licences and authorizations controlled by Contel and its subsidiaries have been completed.[118] Therefore, as a wholly-owned subsidiary of GTE, Contel and its subsidiaries are now bound by the obligations which GTE is subject to under the *GTE Consent Decree*. [119]

192. Thus, it is necessary to view Contel as a General Telephone Operating Company (GTOC) for the purposes of this Order, rather than as an "independent" telephone company that might otherwise be subject to different equal access obligations. Therefore, the issue of whether Contel, as a non-GTE independent telephone company, should be treated differently than the BOCs for the purpose of determining the reasonableness of alternate technology deployment is moot. The question remains, however, whether the use of alternate technologies by Contel, as a subsidiary of GTE, is a reasonable practice.[120] As with the BOCs, we believe that it will be unreasonable for Contel, as a GTOC, to use alternate technologies to provide equal access to ICs on a long-term basis. We conclude that the period we have set out in which BOCs must either phase out alternate technologies, or charge something less than preimium rates for access provided through alternate technologies, must also attach to Contel.[121] Therefore, Contel, as a subsidiary of GTE, must provide access to end offices, where it will be required to provide equal access pursuant to the *GTE Consent Decree*, with electronic switches by December 31, 1992, or must charge something less than premium rates for access provided through alternate technologies at that time. The specific amount GTOCs would be allowed to charge for such access will be determined, if necessary, at a later date. *See* para. 201.

V. SUMMARY OF CONCLUSIONS

193. The primary purpose of this proceeding is to investigate the practice of using alternate technologies to provide FGD service. The Bureau expanded this investigation to include LECs which used alternate technologies, but did not file tariff revisions to reflect this practice.

194. The provisions of Title II of the Act clearly set forth the authority of this Commission to investigate the practices of common carriers in the provision of service, and the duty of the carriers to ensure that service is provided in a manner which is not unjustly or unreasonably discriminatory, and which does not result in an unreasonable discrimination against any class of persons or locality. The Title II provisions must be read in light of Section 1 of the Act which states the Congressional purpose to ensure the provision of quality communications service, and the provision of communications service to as many people as possible.[122] We reject suggestions that any inquiry into the equipment selections of the carriers is beyond the scope of this Commission's mandate. Although a carrier's management must perform the necessary cost/benefit analyses in the first instance, we can and must require carriers to explain those decisions from time to time in order to ensure that the carrier's choices are consistent with the requirements of the Communications Act. Carrier decisions that appear to degrade the quality of service warrant special scrutiny.

195. Upon reviewing the *Revised Designation Order*, the actions of the Bureau in this investigation, and the filings of the parties to this investigation, we conclude that the Bureau had the legal authority to initiate this investigation and to include these LEC practices in the proceeding. We also conclude that the Bureau was implementing this Commission's statutory mandate in a way that is not in conflict with our rules, policies, or precedents.

196. An analysis of the post-dial delay and other information provided by the parties in this investigation demonstrates that post-dial delay can be a problem which causes network quality degradation and increased end user dissatisfaction, and ultimately increased network costs. In addition, the lower quality of service provided by the BOCs to communities served by alternate technologies may negatively affect these communities in the long run.

197. To the extent that the availability of these basic and enhanced options and services are or will be limited to electronic end offices, end users and communities served by alternate technologies may be further disadvantaged. The lack of universal service availability on a permanent basis is contrary to the purposes expressed in Title I. The permanent unavailability of these functions could have a considerable negative impact on the business development prospects of these communities.

198. We have concluded that, given the historical context which led to the installation of alternate technologies, the BOC decision to use these technologies was not unreasonable at that time. Based upon our review of the post-dial delay attributable to the use of these technologies, however, we conclude that the use of these technologies by the BOCs is not an adequate permanent solution to the problem of providing FGD/equal access service in certain areas. In addition, we conclude that the use of alternate technologies results in an unreasonable denial of important services to many communities, services that only are available from electronic end offices.[123]

199. Since we determine that the use of these technologies initially was a reasonable response to circumstances which existed at that time, and we recognize that these BOCs may not be able to convert all of the affected end offices in the near term, we conclude that these BOCs should have a reasonable amount of time to perform conversions. The record supports a finding that conversions could be completed by the end of 1992 with virtually no impact upon any of the BOCs except US West, and that the impact on US West would be minimal. In addition, since the BOCs' original decision to use these technologies was reasonable, and it is reasonable to assume that these BOCs will require a certain amount of time to convert these end offices, we conclude that the use of alternate technologies in these end offices will continue to be a reasonable practice through 1992.

200. In view of our conclusion that past use of alternate technologies to provide access is not "nonpremium" access for purposes of the current Part 69 access rules, we are not requiring any carrier to make any refunds. All accounting orders imposed in this docket are accordingly terminated.

201. We have concluded, however, that it would not be appropriate to permit any BOC or GTOC to continue to charge the premium rate for access provided through the use of alternate technologies after December 31, 1992. Any BOC or GTOC which intends to continue offering access through alternate technologies after December 1992 must notify this Commission of its intention to do so by July 1, 1992. At that time, if necessary, we will initiate proceedings to determine what less-than-premium rate is reasonable and proper for access provided through alternate technologies after December 1992.[124]

202. We also recognize that in certain limited situations conditions may exist that make conversions impractical or infeasible. Accordingly, BOCs will be afforded the opportunity to petition for waivers of the requirement that access be provided at something less than a premium rate on an end office by end office basis for certain limited exceptions. An overview of the direct cases indicates that deployment of electronic switches in some offices may not be feasible, for example, because of the extremely small size of some offices, and the fact that electronic switches are usually not designed for less than a certain number of access lines. The Common Carrier Bureau is authorized to waive this requirement for particular offices if the affected carrier makes a convincing, particularized showing that installation of an electronic switch would clearly be uneconomical. Any such waivers should be filed as soon as practicable, but in any event, no later than July 1, 1992.

203. We also conclude that the provision of FGD/equal access service in a manner which causes significantly different results between interstate intraLATA traffic carried by the BOCs themselves, and traffic carried by the ICs is unjustly discriminatory if allowed to continue for longer than the period of time that implementation of switch replacement requires. Recognizing the exigencies of the circumstances causing alternate technologies to be used in the first place, and the fact that temporary use of these technologies is reasonable, we also find that the routing of interstate intraLATA IC calls, but not BOC calls, through alternate technology equipped end offices is not unjustly discriminatory on a short term basis. We are reluctant to require an action which actually increases post-dial delay on any call. However, given our determination regarding discrimination, we may impose conditions upon any waiver of the nonpremium rate requirement.

204. Finally, we conclude that Contel's use of alternate technologies to provide centralized equal access from tandems in the states of Iowa and Indiana is also not reasonable on a permanent basis, and that Contel, in light of its imminent merger with the GTE Corporation (GTE), should be subject to the same requirements that we impose on the BOCs in this Order. The analysis we apply to the BOCs is appropriately applied to GTE and, in turn, Contel because of the material similarities in the equal access obligations of the BOCs and GTE.

VI. ORDERING CLAUSES

205. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 204(a), 205, and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 204(a), 205, 403, and Section 1.701 of the Commission's Rules, 47 C.F.R. § 1.701, that Southwestern Bell Telephone Company, New England Telephone and Telegraph Company, Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company, Pacific Bell Telephone Company, New York Telephone Company, and Contel Service Corporation, as a GTE Corporation subsidiary, SHALL FILE, no later than July 1, 1992, requests for waiver of the requirement that access provided through alternate technologies

after December 31, 1992, be provided at less than premium rates, or representations that alternate technology-provided access will continue beyond December 31, 1992.

206. IT IS FURTHER ORDERED that waiver requests and representations regarding access provided through alternate technologies must be described on an end office by end office basis, and should be addressed to the Secretary, Federal Communications Commission. Carriers must also serve copies of any filings on the Chief, Tariff Division, Common Carrier Bureau, and the FCC's contractor for public records duplication, Downtown Copy Center at 1114 21st Street, N.W., Washington D.C. 20036, or deliver to Downtown Copy Center in Room 246 at FCC Headquarters, 1919 M Street, N.W., Washington, D.C. 20554.

207. IT IS FURTHER ORDERED that the accounting orders established with respect to Southwestern Bell Telephone Company, Tariff F.C.C. No. 68, Transmittal No. 1629, CC Docket No. 88-287, Memorandum Opinion and Order, 3 FCC Rcd 3694 (Com.Car.Bur. 1988); New England Telephone and Telegraph Company, Tariff F.C.C. No. 40, Transmittal No. 925, CC Docket No. 88-287, Memorandum Opinion and Order, 3 FCC Rcd 5789 (Com.Car.Bur. 1988); and Contel Service Corporation, CC Docket No. 88-287, Memorandum Opinion and Order, 4 FCC Rcd 2565 (Com.Car.Bur. 1988) ARE TERMINATED.

208. IT IS FURTHER ORDERED that the applications for review filed by Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company, and Pacific Bell Telephone Company ARE DENIED.

209. IT IS FURTHER ORDERED that the investigation of local exchange carriers' use of alternate switching technologies in the provision of access service in CC Docket No. 88-287 IS TERMINATED.

210. IT IS FURTHER ORDERED that this Order IS EFFECTIVE on release.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] The term "alternate technologies" describes that class of hardware or software additions or modifications which are made to step-by-step or electromechanical end offices, or access tandems, in lieu of switch replacement with electronic switches, in order to satisfy the equal access obligations imposed upon the Bell Operating Companies (BOCs) pursuant to the Modification of Final Judgment, which resulted in the divestiture of the Bell System. *See* United States v. American Tel. & Tel. Co., 552 F. Supp. 113, 196-200 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 100 (1983) (*MFJ*); *see also* United States v. Western Elec. Co., 569 F.Supp. 1057 (D.D.C. 1983) (*MFJ Implementation Order*). Similar obligations were later imposed upon the General Telephone Operating Companies (GTOCs) and the Independent Telephone Companies (ITCs). *See* United States v. GTE Corp., 603 F.Supp. 730 (D.D.C. 1984) (*GTE Proposed Final Judgment Order*); MTS and WATS Market Structure, CC Docket No. 78-72, Phase III, 100 FCC 2d 860 (1985) (*Phase III Order*) (discussing the unique characteristics and problems of ITCs in providing equal access, and requiring that equal access provided to all interexchange carriers (ICs) must be equal in type and quality).

[2] Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* (Act).

[3] *See generally* United States v. GTE Corp., 1985-1 Trade Cas. (CCH) ¶ 66, 355 (D.D.C. 1985) (*GTE Consent Decree*); *MFJ*, *supra* note 1.

[4] Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company, Tariff F.C.C. No. 1, Transmittal No. 104, Order, 3 FCC Rcd 5085 (Com.Car.Bur. 1987) (*US West Order*). US Sprint Corporation (US Sprint) filed a petition for reconsideration of the *US West Order* on January 29, 1988. In that petition, US Sprint observed that US West's use of alternate technologies appeared to be permanent rather than transitional. US Sprint Petition at 2. US Sprint asserted that there is no reason for the BOCs to provide inferior service to ICs, and that competition in the wake of the Bell System divestiture was intended to provide better service. *Id.* at 4. Finally, US Sprint requested that service provided through the use of alternate technologies be charged at non-premium rates. *Id.* at 9. When the Bureau expanded this proceeding to include the use of alternate technologies by US West, the Bureau noted that its action made the US Sprint petition moot. *Revised Investigation Order*, 4 FCC Rcd at 2586.

[5] For purposes of this proceeding, post-dial delay is defined as the amount of time which elapses between the dialing of the last digit by an end user and the receipt of a ringing or busy signal by that end user. This term is often used interchangeably with the term call set-up time. Call set-up time, however, technically includes the time between the end user's off hook status and the end of dialing. *See* US West Direct Case at 8. Since this period of time has no relevance to this investigation, except insofar as it indicates dialing speed, and since the terms are used interchangeably by the parties, call set-up time will be used in this Order to mean the post-dial delay contributed by a carrier. A more limited measurement of post-dial delay, called LEC post-dial delay, is generally the time interval between the dialing of the last digit and the delivery of the call to an IC's point of presence (POP). This includes the time required to transmit signaling and billing information.

[6] US West Report to Federal Communications Commission, Transmittal No. 104, June 30, 1988 (US West Report).

[7] Southwestern Bell Telephone Company, Tariff F.C.C. No. 68, Transmittal No. 1629, CC Docket No. 88-287, Memorandum Opinion and Order, 3 FCC Rcd 3694 (1988) (*Investigation Order*).

[8] Southwestern Bell Telephone Company, CC Docket No. 88-287, Order, 3 FCC Rcd 4527 (1988) (*Extension Order*).

[9] Southwestern Bell Telephone Company, CC Docket No. 88-287, Order, 3 FCC Rcd 5786 (Com.Car.Bur. 1988) (*Reconsideration Order*).

[10] New England Telephone and Telegraph Company, Tariff F.C.C. No. 40, Transmittal No. 925, CC Docket No. 88-287, Memorandum Opinion and Order, 3 FCC Rcd 5789 (Com.Car.Bur. 1988) (*NET Order*).

[11] Southwestern Bell Telephone Co., *et al.*, CC Docket No. 88-287, Order Designating Issues for Investigation, 4 FCC Rcd 2580 (Com.Car.Bur. 1989) (*Revised Investigation Order*).

[12] *Id.* at 2584.

[13] *Revised Investigation Order*, 4 FCC Rcd at 2582. The Bureau noted that the prior order denying petitions to initiate an investigation said if the report provided by US West "evidences a significant deviation from US West's stated 2 or 3 second delay, this Bureau will at that time consider what further action is necessary in light of that information." *US West Order*, 3 FCC Rcd at 5085-86.

[14] These offerings were described in two petitions for declaratory ruling. *See* ALC Emergency Petition for Declaratory Ruling, filed Jan. 29, 1988 (requesting this Commission to find the use of alternate technologies unlawful, or in the alternative, to require the BOCs to route their own traffic through these same technologies); MCI Petition for Declaratory Ruling, filed Jan. 29, 1988 (requesting that this Commission prohibit the charging of premium rates for access services provided through alternate technologies which produce substantial delay times beyond those experienced with non-alternate FGD switches). *See also* Public Notice, No. 88-155, Feb. 8, 1988. The issues designated by the Bureau for investigation encompassed the questions presented in those petitions, dispensing with the need to take further action on those petitions.

[15] Contel Service Corporation, CC Docket No. 88-287, Memorandum Opinion and Order, 4 FCC Rcd 2565 (Com.Car.Bur. 1989) (*Contel Investigation Order)*. Since the release of the *Contel Investigation Order* the Bureau has taken two procedural actions in this proceeding. *See* Southwestern Bell Telephone Co., *et al.*, CC Docket No. 88-287, Order, 4 FCC Rcd 3591 (Com.Car.Bur. 1989) (extending the time for filing pleadings in the investigation) (*Extension Order)*; Investigation of Alternate Technologies in the Provision of Equal Access, Clarification of Submission of Pleadings, Public Notice, DA 89-481, released Apr. 27, 1989 (Com.Car.Bur.) (recognizing that parties may wish to file comments in support of the direct cases, and that such comments should be filed at the time oppositions to the direct cases are due).

[16] On April 13, 1989, US West filed an application for review of the *Revised Investigation Order*, and motions to terminate the investigation and to dismiss US West from the investigation. ALC filed an opposition to all three pleadings of US West on April 24, 1989, and AT&T filed an opposition to the application for review on April 28, 1989. US West filed a reply to ALC's opposition on April 28, 1989.

[17] Pacific filed its application for review on April 19, 1989. ALC filed an opposition on May 4, 1989; Pacific filed a reply on May 17, 1989.

[18] *See* note 6, *supra*; *Revised Investigation Order*, 4 FCC Rcd at 2581.

[19] *See Revised Investigation Order*, 4 FCC Rcd at 2581.

[20] US West Reply at 5 n.11 (citing *Revised Investigation Order*, 4 FCC Rcd at 3695).

[21] *See* discussion in Section II, and cases cited at notes 6-8, *supra*.

[22] *Revised Investigation Order*, 4 FCC Rcd at 2581.

[23] *Id.*

[24] *Id.*

[25] We do not agree with ALC's contention that US West was not entitled to present such questions in an application for review. The expansion, contraction or modification of the scope of an investigation initiated on delegated authority is an appropriate subject for review.

[26] *See* petitions cited at notes 3 & 12, *supra*.

[27] US West states that even though the cited petitions did not propose the use of new technologies, those petitions were filed in response to, and sought a ruling on, the use of alternate technologies by US West in its original tariff filing. *See* notes 3 & 12, *supra*. US West appears to assume that Section 7(b) does not apply to tariff filings made by LECs, since it asserts that the one-year time frame begins with the filing of the ALC, MCI, and Sprint petitions. *See* US West Motion To Dismiss at 2-3.

[28] US West Motion To Dismiss at 3-4. US West contends that this Commission has previously determined that the use of alternate technologies is reasonable and in the public interest. *Id.* at 4 (citing *US West Order*; Indiana Switch Access Division, Memorandum Opinion, Order and Certificate, W-P-C-5671, Mimeo 3652 (Com.Car.Bur.) (released Apr. 10, 1986) at 10, *review den.*, 1 FCC Rcd 634 (1986) (*Indiana Switch)*; Iowa Network Access Division, 3 FCC Rcd 1468 (Com.Car.Bur. 1988), *recon.* 4 FCC Rcd (1989) (*Iowa Network)*; Contel of Indiana, 3 FCC Rcd 4298 (Com.Car.Bur. 1988) (*Contel Indiana)*. The issue of whether the use of alternate technologies has been found to be reasonable and in the public interest, and the applicability of the Section 214 proceedings cited above, are addressed in Section III.E.4. of this Order, *infra*.

[29] *See Extension Order*, 4 FCC Rcd at 3591.

[30] 47 U.S.C. § 157(b).

[31] Overlap outpulsing is a form of signalling available with FGD access that transmits the called number and the customer's number (automatic number identification or ANI) to the interexchange carrier's switch, but it sends the ANI first, after the caller has dialed the first six digits of the call. Non-overlap outpulsing first sends the called number and then the ANI, which results in increased post-dial delay.

[32] *See* notes 3 & 12, *supra*. We previously noted that US West appears to concede that the petitions for declaratory ruling did not constitute proposals to use a new technology or service. Therefore, we understand US West's previous position to be a recognition that Section 7 does not apply to this proceeding. *See* note 25, *supra*.

[33] We also note that SWB and US West had previously requested extensions of time in this proceeding, and a reformation of the issues investigated. *See* notes 8 and 9, *supra*. Pacific and NYT were not parties to this investigation, and NET did not have issues to address, until the release of the *Revised Investigation Order*. Contel was not a party to the investigation until approximately one week later.

[34] The Bureau determined, upon a review of the relevant technical publications, that ICs could expect that the primary source of FGD service provision would ultimately be through electronic switches, with a certain number of functionalities available. *See Revised Designation Order*, 4 FCC Rcd at 2587 n.21. *See also* discussion at Section III.D.4, *infra*.

[35] We do not address whether this practice should have been tariffed by Pacific or NYT pursuant to Section 203 of the Act. That question is beyond the scope of this proceeding.

[36] Section 203(a) of the Act, 47 U.S.C. § 203(a).

[37] Section 203(a) of the Act, 47 U.S.C. § 203(a).

[38] Section 204(a) of the Act, 47 U.S.C. § 204(a).

[39] *See* Section 61.1(c) of this Commission's Rules, 47 C.F.R. § 61.1(c). *See generally* Part 61 of this Commission's Rules, 47 C.F.R. Part 61.

[40] Section 201(b) of the Communications Act of 1934, 47 U.S.C. § 201(b).

[41] Section 202(a) of the Communications Act of 1934, 47 U.S.C. § 202(a).

[42] Pacific Application for Review at 3-5 (citing Investigation into the Quality of Equal Access Service, Memorandum Opinion and Order, RM-5196, FCC 86-248, Mimeo No. 36689, released May 23, 1986 (*TDX Order)* at paras. 6, 103 & 133).

[43] *Id.* at 5-6 (citing *TDX Order* at para. 133).

[44] *Id.* at 6-7 (citing Joint Petition for Expedited Rule Making, CC Docket No. 85-348, Mimeo 36287, FCC 85-604, released Dec. 5, 1985 (*Joint Petition Order)* at paras. 9 & 66).

[45] *Id.* at 6-9 (citing Consolidated Application of AT&T and Specified Bell System Companies for Authorization under Sections 214 and 310(d), 96 FCC 2d 18, 50, 52-53 (1983) (*Consolidated Application Order)*). In the *Consolidated Application Order* we stated that the provision of equal access is in the public interest "if it is accomplished without unnecessary expenditures." *Id.* at 50. We also stated that, while agreeing with AT&T that the operating companies should have flexibility in providing equal access, and that we were not convinced that equal access had to be provided through Class 4 switches, "we are concerned that the operating companies may construct access tandems unnecessarily." *Id.* at 52-53.

[46] Pacific Application for Review at 9-10 (quoting United States v. Western Elec. Co., 469 F. Supp. 1057, 1063 (D.D.C. 1983)). Pacific states that we accepted the Court's definition of equal access for purposes of the provision of FGD service (citing MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, Memorandum Opinion and Order, 97 FCC 2d 834 n.40 (1984) (*Phase I Order); Joint Petition Order* at para. 63.

[47] *Id.* at 15 (citing 47 C.F.R. §§ 0.91(n) & 0.291(h)).

[48] *Id.* at 17 (citing NARUC v. FCC, 737 F. 2d (D.C. Cir. 1985) *cert. denied*, 469 U.S. 1227 (1985) (*NARUC V. FCC)*).

[49] *Id.* at 18-19 (citing Midyear 1986 Access Tariffs, 1 FCC Rcd 1247; 47 C.F.R. §§ 0.91 & 0.291(2); GTE Service Corp., 2 FCC Rcd 4595 (1987); Delegation of Authority, 47 R. R. 2d 537 (1980)).

[50] Ameritech Telephone Company, Bell Atlantic Telephone Company, and BellSouth Telephone Company do not use alternate technologies, but rather, have replaced non-conforming end offices with electronic switches.

[51] Provision of Access for 800 Service, CC Docket No. 86-10, Report and Order, FCC 89-106, 4 FCC Rcd 2824 (1989) (*800 Access Order)*. In the *800 Access Order* we determined that the substantial increase in post-dial delay incurred by a proposed data base system degraded service quality, and, *inter alia*, denied the request by certain LECs to discontinue NXX access until such time as network improvements are deployed substantially reducing such access delay times. *Id.*

[52] ALC Opposition at 7 (citing *Phase I Order*, 97 FCC 2d at 834 n.40).

[53] Pacific requests a waiver of Section 1.115(f) of the Commission's Rules, 47 C.F.R. § 1.115(f), in order to file its reply. Pacific Motion for Leave To File Reply at 1-3. We find, however, that Pacific's Reply was properly filed and that a waiver is unnecessary in light of a recent clarification of 47 C.F.R. § 1.115(f) by this Commission. *See* Ronald F. Trinchitella, 4 FCC Rcd 6360 at n.4 (1989). Therefore, we will consider Pacific's Reply pursuant to 47 C.F.R. § 1.115(d).

[54] Pacific alleges that applications for review of interlocutory orders may be filed by "any aggrieved party," whether or not a participant in the proceeding. Pacific Reply at 2 (citing 47 C.F.R. § 1.115).

[55] Pacific Reply at 4-5 (citing *Consolidated Application Order*, 96 FCC 2d at 50, for the proposition that this Commission requires equal access to be provided in a cost effective manner).

[56] *See, e.g., Revised Designation Order*, 4 FCC Rcd at 2582-83.

[57] *Id.* at 2583.

[58] *Id.*

[59] 47 U.S.C. § 0.291(h).

[60] 5 U.S.C. § 551(4).

[61] 5 U.S.C. § 553(b).

[62] 737 F.2d at 1121 n.29.

[63] This was not an explicit finding. In that Order we stated that "we will assume that Feature Group D represents equal access in the absence of a contrary finding." *Phase I Order*, 97 FCC 2d at 859 n.40.

[64] *Joint Petition Order* at para. 65.

[65] *Id.*

[66] We also determine that the Bureau's actions are not in violation of equal access definitions in the *MFJ* or the *Phase I Order.*

[67] *Consolidated Application Order*, 96 FCC 2d at 52-53. The Commission approved the consolidated application with certain conditions. Although its action was of limited relevance to the current proceeding, the Commission was determining the costs of divestiture, and specifically reviewing the probable costs of the future provision of equal access. The Commission expressed concern that equal access be provided without waste, stating that "we are not convinced at this time that access should always be provided through a Class 4 switch . . . we are concerned that the operating companies may construct access tandems unnecessarily." *Id.* The *Joint Petition Order* also admonished the carriers to assure the provision of equal access in an efficient and cost-effective manner. *Joint Petition Order* at para. 67. The decision to designate the issues described in the *Revised Investigation Order* is fully consistent with the Commission's views as expressed in that Order.

[68] MTS and WATS Market Structure, CC Docket No. 78-72, Phase III, Report and Order, 100 FCC 2d 860, 878 (1985) (*Phase III Order)* (determination of the obligations of the ITCs to implement equal access for ICs).

[69] It should be noted that Pacific's reliance on the limitations of the Bureau's authority regarding complaints (Pacific Application for Review at 18) is not applicable to the investigatory proceeding before us.

[70] SWB Direct Case at 6 & n.8 (citing American Tel. & Tel. Co. and Western Union Tel. Co., Docket No. 15094, 24 FCC 2d 565, 568 (1970)).

[71] *Id.* at 7 (citing Copley Press Inc. v. FCC, 444 F.2d 984 (D.C. Cir. 1971)).

[72] *Id.* at 7-9. Section 7(a) provides as follows:

> It shall be the policy of the United States to encourage the provision of new technologies and service to the public. Any person or party (other than the Commission) who opposes a new technology or service proposed to be permitted under this Act shall have the burden to demonstrate that such proposal is inconsistent with the public interest.

[73] *See US West Order, supra* note 8.

[74] Direct Cases cite the following Section 214 applications: *Iowa Network*, 3 FCC Rcd at 1471; *Indiana Switch* at 10; *Contel Indiana*, 3 FCC Rcd 4298.

[75] MCI cites MCI Telecommunications Corp. v. FCC, 712 F.2d 517, 533 n.19 (D.C. Cir. 1983).

[76] Citing *US West Order*, 3 FCC Rcd at 5085.

[77] *See* note 12, *supra*.

[78] US West also contends that Section 7 required this Commission to complete our investigation not later than June 5, 1989, if not by January 29, 1989. *Id.* at 51-52 and n.121. We reject claims that the Section 7 deadline is applicable to this proceeding in Part III.C. of this Order.

[79] *See Iowa Network* at para. 39 ("we expect INAD to provide final information on the technical characteristics and identity of its switch, including reliable measurements of post-dialing delay and certification of any effects of the network upon access....[W]e approve the INAD proposal, subject to verification...that the projections and assumptions upon which the proposal are based are accurate."); *Indiana Switch*; *Contel Indiana*, 3 FCC Rcd at 4301.

[80] In addition, in most of these Section 214 proceedings the provision of equal access was not being proposed in response to requests of ICs, but was being proposed by the LEC in order to promote competition and service provision from numerous ICs in the service territory. In the current investigation, alternate technologies are being used by the BOCs to satisfy equal access requests of various ICs.

[81] 4 FCC Rcd at 2583.

[82] NYNEX Direct Case at 14 n.30 (citing *Phase III Order*, 100 FCC 2d 860 (1986); *TDX Petition For Rule Making)*. A summary of the parties' responses to the issue of post-dial delay attributable to alternate technologies is attached hereto as Appendix B.

[83] *Id.* at 11 (citing Final Report of the United States Concerning BOC Schedules for Providing Equal Access in Response to MCI's Requests and Memorandum in Support of Motion for an Enforcement Order Requiring NYNEX To Accelerate Its Provision of Equal Access (Jan. 29, 1988) (DOJ Report)).

[84] We note that the District Court for the District of Columbia recently concluded that access provided through alternate technologies generally provides equal access with minimum divergence for the purpose of equal access compliance under the *MFJ*. *See* United States v. Western Electric Co., Civ. No. 82-0192 (D.D.C. May 8, 1990).

[85] MCI Opposition at 26 (citing *800 Access Order)*.

[86] USTA Comments at 3 (citing *TDX Petition for Rule Making)*.

[87] *MFJ*, 552 F.Supp. at 196.

[88] *Id.* at 233.

[89] The term "non-SPC switch" describes a switch that does not have stored program control.

[90] *MFJ*, 552 F.Supp. at 233. The Court continued that denial of equal access, due to the relative costs and benefits, "shall be for the minimum divergence in access necessary, and for the minimum time necessary, to achieve such feasibility." *Id.*

[91] 1986 Report of the United States to the MFJ Court Concerning the Status of Equal Access, filed Oct. 31, 1986 (1986 DOJ Report) at 6-8.

[92] DOJ Report at 2.

[93] We view this determination as a conservative finding. Due to the diversity of alternate technologies, call routing architectures, and possible comparisons which can be drawn from the record, some generalizations are required. Therefore, some exceptions to this finding can be identified in the record. NYNEX, for instance, reported additional post-dial delay times as low as 3.5 and 3.78 seconds for the NAC 5XB tandem and direct alternate technology architectures (4.7 and 4.68 seconds if compared to electronic post-dial delay times measured at a dialing speed of 0.62 seconds per digit). On the other hand, times reported for the LEAS SXS tandem and NAC SXS tandem alternate technology architectures indicate additional post-dial delay as high as 12 to 14 seconds. In addition, the difference in post-dial delay times will substantially increase as CCSS7 is connected to electronic offices, as the use of CCSS7 is generally incompatible with alternate technology end offices. A post-dial delay time in electronic offices equipped with CCSS7 of 0.2 seconds would increase the additional post-dial delay time attributable to alternate technology architectures to approximately 8.4 to 13.68 seconds. *See* Appendix B.

[94] 4 FCC Rcd at 2583.

[95] We note that the record indicates that direct trunking is available with alternate technologies used by SWB and Pacific, and in one 5XB end office in NYNEX's service territory. In addition, SWB indicates that some features are not available in some electronic offices, notably the 1ESS and 2B ESS. In general, however, alternate technology equipped end offices tend to support fewer basic functions than comparably equipped electronic end offices.

[96] Duffy and Mercer, A Study of Network Performance and Customer Behavior During Direct-Distance-Dialing Call Attempts in the U.S.A., 57 Bell System Tech. J. 1 (1978). *See Investigation Order*, 3 FCC Rcd at 3695-96; *Revised Investigation Order*, 4 FCC Rcd at 2581-82. A study provided by NYNEX stated that "empirical study and simulation results may *underestimate* the call abandonment rate when call setup time changes are initially introduced into the network." (emphasis in original) NYNEX Direct Case at Exhibit 16, cover page.

[97] *See, e.g., Investigation Order*, 3 FCC Rcd at 3695; *Revised Investigation Order*, 4 FCC Rcd at 2582.

[98] *See Investigation Order*, 3 FCC Rcd at 3694 & n.12, and pleading citations therein.

[99] *See id.*; Pacific Reply at 7; SWB Reply at 5.

[100] 4 FCC Rcd at 2583. Appendix C contains a summary of the number of lines and offices affected by the use of alternate technologies.

[101] *See* Letter from Robert H. Jackson, US West, Inc., to Secretary, Federal Communications Commission, dated June 1, 1990.

[102] *See* Letter from David J. Hostetter, Southwestern Bell Corporation, to Secretary, Federal Communications Commission, dated Oct. 27, 1989.

[103] *See* Letter from William F. Adler, Pacific Telesis, to Secretary, Federal Communications Commission, dated Nov. 1, 1989.

[104] US West Reply at 13 n.27 (citing Kitchen v. United States, 464 F.2d 801 (D.C.Cir. 1972)). This case, however, is inapposite because it dealt with the Commissions's authority over construction of a LEC switch building under Sections 214(a) and 221(b) of the Act, and did not involve § 201(b) or § 202(a), as here, where the issues involve unjust, unreasonable practices or unreasonable discrimination.

[105] *See 1986 DOJ Report*. The BOCs' obligation to provide equal access, and the cost/benefit test, are discussed *supra* at para. 87.

[106] 4 FCC Rcd at 2583.

[107] *Cf.* Prescription of Revised Percentages of Depreciation, Order, 5 FCC Rcd 766 at 768 (1990) (NYT's crossbar adjuncts is a "dying account," and use of an amortization procedure to write off the account is consistent with Commission policy and practice).

[108] Supplement to Direct Case of US West at 4.

[109] A summary and discussion of the locations of end offices where alternate technologies were implemented is attached hereto as Appendix D.

[110] 4 FCC Rcd at 2583.

[111] We note that this particular issue does not apply to Contel. Contel does not provide end-to-end interexchange services from points in Iowa or Indiana to points in other states.

[112] 4 FCC Rcd at 2583.

[113] NYNEX Direct Case at 12-13 (citing United States v. Western Elec. Co., 569 F. Supp. 1057, 1108 (D.D.C. 1982)).

[114] The Bureau has specifically rejected in the past the notion that intraLATA interstate traffic is specifically reserved for the LEC. *See Investigation Order*, 3 FCC Rcd at 3696; GTE Telephone Operating Companies, 2 FCC Rcd 3345, 3346 (1987); GTE Telephone Operating Companies, Transmittal Nos. 247, 259, and 277, DA 87-1101, released July 31, 1987, at para 13.

[115] *Id.* at 46 (citing *NECA ADA Order*, 2 FCC Rcd at 6761; *MDAS Order*, 3 FCC Rcd at 2312).

[116] *Id.* at 11-14 (citing Application of Contel of Indiana, Inc., Memorandum Opinion and Order and Certificate, 3 FCC Rcd 4298 (Com.Car.Bur. 1988)).

[117] *See, e. g.*, Consent to Transfer of Control of Authorizations Held by Contel Subsidiaries, FCC 91-49, File No. ENF-90-11, Memorandum Opinion and Order, released Feb. 15, 1991; United States v. GTE Corp., Civ. No. 83-1298 (D.D.C. Feb. 12, 1991).

[118] *See* letter from G. Polivy, GTE Service Corp., dated Mar. 18, 1991, to Secretary, Federal Communications Commission.

[119] *See generally* Paragraph II(K) of the Conset Decree in United States v. GTE Corp., 1985-1 Trade Cas. (CCH) ¶ 66,355, at 64,772 (D.D.C. 1985) (*GTE Consent Decree*).

[120] While the question of independent telephone company use of alternate technologies is now irrelevant for the purposes of this Order, and we do not address that question here, we emphasize that the use of alternate technologies by any telephone company may constitute an unreasonable practice depending on factors such as the duration of the use.

[121] The *GTE Consent Decree* imposes substantially similar equal access obligations on GTE and its operating companies as the MFJ imposes on the BOCs. Therefore, our analysis of the BOCs' use of alternate technologies to provide equal access also applies to GTE.

[122] Section 1 of the Act provides that one purpose of the Communications Act is to "make available, so far as possible, to all of the people of the United States a rapid, efficient, Nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . . ." 47 U.S.C. § 151.

[123] The continued degradation of access service quality due to increased post-dial delay constitutes a sufficient basis for our order in this proceeding. The continued unavailability of other services, together with post-dial delay, strengthens our conclusion that the use of alternate technologies in lieu of conversion to electronic end offices is an unreasonable practice after December 1992.

[124] In the past we have approved agreements requiring or ordered substantial discounts where carriers have provided access services inferior to premium access. *See, e.g.*, Exchange Network Facilities (ENFIA), 71 FCC 2d 440 (1979); MTS/WATS Market Structure (Phase I), 93 FCC 2d 241 (1983), *modified on recon.*, 97 FCC 2d 682, further modified on recon., 97FCC 2d 834, aff'd in principal part and remanded in part, Nat'l Ass'n of Reg. Util. Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 105 S.Ct. 1224, 1225 (1985), *modified on further recon.*, 99 FCC 2d 708 (1984), 100 FCC 2d 1222, *aff'd on further recon.*, 102 FCC 2d 899 (1985), *appeal docketed*, U.S. Telephone, Inc. v. FCC, No 84-115 (D.C. Cir. Mar. 23, 1984). *See also* 47 C.F.R. § 69.113.

APPENDIX A

Direct Cases (filed April 21, 1989)

Contel Service Corporation (Contel)

NYNEX Telephone Companies (NYNEX)

Pacific Bell Telephone Company (Pacific)

Southwestern Bell Telephone Company (SWB)

US West, Inc. (US West)

Comments and Oppositions to the Direct Cases (filed May 26, 1989)

Allnet Communications Services, Inc. (Allnet)

Illinois Consolidated Telephone Company (ICTC)

Iowa Network Services Company (Iowa NSC)

MCI Communications Corporation (MCI)

National Telecommunications Cooperative Association (NTCA)

SRX Corporation (SRX)

United States Telephone Association (USTA)

Rebuttals (filed June 6, 1989)

Contel

NYNEX

Pacific

SWB

US West

APPENDIX B

SUMMARY OF POST-DIAL DELAY

Chart 1. Absolute Post-Dial Delay for Alternate Technology Architectures

	Reporting Carrier				
Alt. Tech.	NYNEX	US West	SWB	Pacific	MCI
LEAS SXS (tandem)	6.94	13.14	16.68		17.40
LEAS 3ESS (tandem)	9.66				9.70
NAC SXS (tandem)	6.38			7.05-7.63 (7.31)	7.80
NAC 5XB (direct)	8.60	10.90		8.69-8.99 (8.84)	9.30
NAC 5XB (tandem)		13.88			18.20
Digitech 5XB (tandem)			9.52		9.50

Chart 2. Reported Post-Dial Delay for Electronic SPC Offices

	Dialing Speed			
Architecture	.32	.64	1.24	Any Speed
FGD SPC (direct)	2.6	1.7	1.6	---
FGD SPC (tandem)	5.1	3.9	2.0	---
FGD CCSS7 (both)	---	---	---	0.2

Chart 3. Comparative Post-Dial Delay for Alternate Technology Architectures

This chart reflects the additional post-dial delay contributed by alternate technology architectures in comparison with electronic SPC end office architectures. The entries reflect this comparison for non-CCSS7 electronic SPC end offices at electronic switch test dialing speeds of 0.32 and 0.64 digits per second, and for an electronic SPC end office equipped with CCSS7. Alternate technologies are currently not compatible with CCSS7.

	Reporting Carrier				
Alt. Tech.	NYNEX	US West	SWB	Pacific	MCI
LEAS SXS (tandem)	1.84/3.04 6.74	8.04/9.24 12.94	11.58/12.78 16.48		12.30/13.50 17.20
LEAS 3ESS (tandem)	4.56/5.76 9.46				4.80/5.80 9.50
NAC SXS (tandem)		8.78/9.98 13.68			13.10/14.30 18.00
NAC 5XB (direct)	3.78/4.68 6.18			4.71/5.61 7.11	5.20/6.10 7.60
NAC 5XB (tandem)	3.50/4.70 8.40	5.80/7.00 10.70		3.74/4.94 8.64	4.20/5.40 9.10
Digitech 5XB (tandem)			4.42/5.62 9.32		4.40/5.60 9.30

APPENDIX C

Lines and Offices Affected by
the Use of Alternate Technologies

Lines and Offices Affected	Carrier					
	NET	NYT	NYNEX	Pacific	SWB	US West
Number of Offices	----	----	----	----	26 or 1313	97
Percent of Offfices	8.4 (89) 3.4 (90)	11.9 (89) 5.0 (90)	10.2 (89) 4.1 (90)	*5.0 (88) *4.0 (89)	1.98	less than 2.0
Number of Lines	----	----	----	(88) 729,503 (89) 551,032	89,924 of 11,288,644	208,269
Percent of Lines	5.5 (89) 1.7 (90)	12.8 (89) 3.8 (90)	10.2 (89) 3.1 (90)	6.0 (88) 4.0 (89)	0.797	5.0

* 2 percent of Pacific's end offices are NOT CONVERTED to equal access.
** The numbers in parenthesis indicate years. All other data is for the current year.

APPENDIX D

Deployment of Alternate Technologies

1. NYNEX

The original end office equipment in alternate technology offices was installed between the years of 1930 and 1981. NYNEX Direct Case at Exhibit 19. End offices using alternate technologies range in size from 1,404 lines to 32,502 lines as of January 1, 1988.

Carrier	Offices and Lines Equipped With Alternate Technologies			Number of Offices with Fewer Lines Than Alt. Tech. Offices	
	Offices	Lines	Lines/ Office	1985-88	After 1988
NET	57	285,232	5,004	90	261
NYT	82	1,203,854	14,681	162	145

NYNEX Direct Case at 21.

2. Pacific

The original end office equipment in alternate technology offices was installed between the years of 1954 and 1971. Pacific Direct Case at 30.F. End offices using alternate technologies range in size from 4,260 lines to 52,247 lines as of December 31, 1988. Pacific Direct Case at 30.G.

Number of Offices:	Year				
	1985	1986	1987	1988	1989
Replaced Offices Which Are Smaller Than Alternate Technology Offices	52	31	37	25	-0-
Number of Offices Not Scheduled For Replacement				175	148

Pacific Direct Case at 30.G.

3. SWB

The original end office equipment in alternate technology offices was installed between the years of 1941 and 1976. SWB Direct Case at Appendix 3. SWB provides no data regarding the range in size of end offices using alternate technologies.

In its Direct Case at 40, SWB reports that 206 switches were replaced in the past four years which had the same number or fewer lines per office than those in which alternate technologies were deployed. Of these, SWB states, 112 were subject to modernization plans prior to MCI's bona fide request for FGD service from these end offices. SWB states that 92 of the 112 end offices subject to MCI bona fide requests were replaced. SWB Direct Case at 40.

4. US West

The original end office equipment in alternate technology offices was installed between the years of 1939 and 1988. US West Supplement to Direct Case at Attachment 1. US West provides no data regarding the range in size of end offices using alternate technologies.

US West does not supply the information requested in Question 30.G of the Revised Designation Order regarding the number of replaced end offices serving the same or fewer number of lines than alternate technology end offices. See US West Direct Case at 46.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Annual 1991 Access
Tariff Filings

National Exchange Carrier Association — Transmittal No. 452

Universal Service
Fund and Lifeline
Assistance Rates

MEMORANDUM OPINION AND ORDER

Adopted: June 21, 1991; Released: June 21, 1991

By the Chief, Common Carrier Bureau:

I. EXECUTIVE SUMMARY

1. This Order reviews the 1991 interstate access tariffs which local telephone companies filed to retarget rates at reasonable levels in compliance with Commission Rules and Orders.

2. Local companies subject to price cap regulation -- the seven Regional Bell Operating Companies (RBOCs), GTOC, Contel, United, Rochester, and SNET -- have filed access rate reductions of $431 million.[1] A review of the filings indicates that, for the most part, these rates as reduced are within price cap limits and include appropriate adjustments for increasing productivity targets, inflation, and exogenous factors.

3. In a few specific cases, however, the companies do appear to have made errors in treatment of exogenous cost changes, such as the amortization of inside wire costs, taxes, and common line support payments. Some other mathematical or methodological errors also have been identified, which the companies have in some instances corrected voluntarily. For the remaining errors, this Order directs price cap companies to submit revised filings with rate reductions computed from the present record to bring the filings into compliance with the price cap rules. These adjustments will reduce rates by an additional $55 million when they become effective July 1. We also direct price cap companies to submit additional information to verify that their new services are properly included in their Price Cap Index (PCI) calculations.

4. For the companies who remain under rate of return regulation, our review of the revised rates, which would produce increases totalling $34 million, focused largely upon each company's forecasts of costs and demand. We examined whether these forecasts were reasonable and justified, based upon both the company's record of accuracy in forecasting and the historical trends in its operations. Whenever the review identified unexpectedly high rates and the company's justification proved inadequate, or where other apparent errors were identified, we calculated adjustments, totalling $3.8 million. These rates will also take effect July 1, as will a $5.6 million net increase in funds for programs to support universal service. Overall, the tariffs as revised in conformance with this Order will reduce interstate access rates by approximately $450 million.

II. BACKGROUND

5. Under the Commission's Rules, most local exchange carriers (LECs) are required to recompute and refile their rates for interstate access services and rate elements on an annual basis. Section 69.3 of the Commission's Rules, 47 C.F.R. § 69.3. As has been the case since the first interstate access tariffs were filed in 1983, these tariffs are required to implement Commission rules and orders affecting access, and to reflect individual LEC circumstances in the setting of just and reasonable rates.

6. This year's annual tariffs mark the achievement of an important reform in the access tariff process. The Commission recently adopted a program of incentive regulation for many LECs, setting caps on access prices for the coming years that embody challenging but achievable standards for growth in LEC efficiency while encouraging them to exceed these standards through profit incentives.[2] The price cap plan is mandatory for the seven RBOCs and GTOC and optional for other LECs except for members of any National Exchange Carrier Association (NECA) pool. Non-price cap LECs continue to set access rates based on their projected costs for the coming year, including earnings targetted at the current prescribed rate of return of 11.25 percent.

7. To assist the LECs in preparing relevant support information and the Commission and the public in reviewing the filed rates effectively, the Common Carrier Bureau also revised our Tariff Review Plan (TRP) formats for this year's filings.[3] In particular, the Bureau established a separate TRP format for the information needed to verify that rates filed by price cap LECs comply with price cap rules. The annual tariffs were filed on April 2, 1991 to take effect on July 1, 1991. Subsequently, on April 17, 1991, the Commission released an Order adopting several changes to the price cap plan.[4] The Bureau accordingly directed price cap LECs to revise their access tariffs and TRPs to reflect the modified price cap rules and also revised the schedules for petitions and replies.[5] The tariffs as revised retain the same July 1, 1991 effective

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[1] Appendix A is a list of those parties filing pleadings in this proceeding and lists the full and abbreviated names of the parties that we use in the text of this Order.

[2] *See* Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786 (1990) (*LEC Price Cap Order*), *recon.*, FCC 91-115, released Apr. 17, 1991 (*LEC Price Cap Reconsideration Order*), *petitions for further recon. pending.*

[3] Commission Requirements for Cost Support To Be Filed With 1991 Annual Access Tariffs, 6 FCC Rcd 1339 (Com. Car. Bur. 1991)(*TRP Order*). *See also* Procedures for 1991 Annual Access Charge Tariffs To Be Filed On Or Before April 2, 1991, 6 FCC Rcd 1854 (Com. Car. Bur. 1991).

[4] *LEC Price Cap Reconsideration Order*, n. 1, *supra.*

[5] Common Carrier Bureau Revises Pleading Schedule for 1991

date, which is also the effective date of revisions filed by the National Exchange Carrier Association in the rates assessed on interexchange carriers (IXCs) to support the Universal Service Fund (USF) and Lifeline Assistance (LA) programs.

III. SUMMARY OF FILED TARIFFS

8. Price cap LECs filed substantial rate reductions for the Switched Access elements used for ordinary long distance calls, a total of $428 million, or 4.0 percent.[6] Subscriber Line Charges would also be reduced by $17 million, or 0.3 percent, while the Special Access services and facilities used for private networks, WATS, 800 Service, and other more specialized services would increase by $14 million, or 0.57 percent. The net reduction in the access rates filed by price cap LECs is $431 million.

9. At the same time, overall rate increases were filed by rate of return LECs and by NECA for USF. Taken together, the Tier 1 rate of return LECs, their affiliated Tier 2 companies, and NECA have filed increases in Switched Access rates of $29.5 million, or 2.4 percent.[7] Subscriber Line Charges for these companies would increase by $1.2 million, or 0.3 percent and Special Access rates by $3.7 million, or 3.4 percent. Overall, these rate of return LECs have filed a net increase in access rates of $34.4 million. In its USF-LA filing, NECA increases USF rates by $14.7 million, and reduces LA rates by $9.1 million. Thus, for the LECs as a whole, the revised tariffs would produce access rate reductions of $391 million.[8]

IV. PRICE CAP TARIFF RULES

10. Effective on January 1, 1991, price cap LECs established their initial price cap indexes and became subject to the price cap rules. Each index was based upon a starting value of 100 to represent rates effective July 1, 1990, and then adjusted to recognize subsequent rate changes and necessary recalculations. The most important recalculations were rate reductions to implement the Commission's adoption of a reduced industry cost of capital, embodied in the prescribed rate of return, and the phase-in of jurisdictional separations changes. The overall effect of the January 1 filings was essentially to transpose rate of return-based price levels into equivalent price cap indexes by re-initializing the indexes for these changes. The current filings are the first to implement the price cap rules in their entirety, including the implementation of standards for LEC productivity growth, adjustments for inflation, calculation of appropriate changes in exogenous costs, and amalgamation of new services into the price cap plan.[9] In addition, two more LECs have elected price cap regulation in their April 2 transmittals, Rochester and SNET.

11. The PCI establishes productivity growth standards of either 3.3 percent or 4.3 percent. In the current filings, only Pacific elected the higher 4.3 percent factor, which requires it to set lower rates for customers this year in exchange for the opportunity to share with customers a smaller portion of any profits it may earn. The inflation adjustment is 4.8 percent, the change in the Gross National Product Price Index (GNP-PI) in 1990 as reported by the Department of Commerce. These adjustments to the current PCI are weighted to apply only to endogenous changes, that is the portion of the PCI considered to be within the LEC's control and its ability to achieve productivity gains. The third adjustment to the PCI is for exogenous changes, generally those changes the Commission has determined are outside the LEC's control, such as changes in separations rules and scheduled cost amortizations.

12. This formula is used to compute the PCIs for three of the LEC baskets of services, the traffic sensitive, special access, and interexchange baskets. For the fourth basket, common line, a separate formula is used to compute the allowed Carrier Common Line (CCL) rate; this "Balanced 50/50" formula recognizes the LEC productivity offset and the growth in CCL usage per line during the base year, in order to attribute roughly half the productivity benefit of growth to the LEC. Subscriber Line Charges are computed in the same manner as for rate of return LECs.

13. The individual baskets are further divided into service categories and, as a protection for ratepayers, each of these categories is subject to rate bands, measured by the Service Band Indexes (SBIs). The SBIs are applied to limit changes in the category rates to + or - 5 percent per year, adjusted for changes in the PCI. Separate subindexes are applied within the High Capacity Special Access service category to DS1 and DS3 services.

14. LECs establish compliance with the price cap indexes and bands by demonstrating that their Actual Price Indexes (APIs), computed from new rates and base year demand quantities, are within the limits set by the PCIs and SBIs. Filings that set prices in compliance with all basket and band limitations are presumed to be reasonable and will not ordinarily be suspended or investigated. Tariff transmittals by price cap LECs with rates outside these limits forfeit the presumption of reasonableness and require additional justification. In particular, above-cap and above-band filings carry a heavy burden of justification and a strong likelihood of suspension.

Annual Access Tariff Filings, Public Notice, DA 91-511, released Apr. 18, 1991. The Bureau also established a pleading cycle for the filing of comments concerning data submitted by the LECs on May 15, 1991, pursuant to the Commission's Automated Reporting Management Information System (ARMIS) requirements.

[6] Of this total, $292 million is for reductions in Carrier Common Line (CCL) rates and $136 million for reductions in switched Traffic Sensitive (TS) rates. This information has been drawn from Table RTE-1 of the price cap LEC TRP.

[7] This includes a reduction in CCL rates of $27.1 million and an increase in TS switched rates of $56.6 million. This information has been drawn from Table RTE-1 of the Tier 1 rate of return carriers' TRPs and from the NECA Description and Justification.

[8] This figure does not include the rate changes filed by several small, Tier 2 LECs who file their own tariffs.

[9] The major feature of the price cap plan that is not directly incorporated in the current filings is the "backstop" mechanism, which provides for sharing of exceptionally high profits with ratepayers or adjustment of the price cap indexes upward for exceptionally low profits beginning July 1, 1992, based upon results in calendar year 1991.

15. In the following sections, we discuss the issues raised both by petitions against the access tariffs and by our own review of the filings. In Section V we address issues raised by tariffs filed pursuant to the Commission's price cap rules. We discuss the filings of LECs that continue to be regulated under rate of return rules in Section VI and in Section VII we resolve issues concerning NECA's USF and LA rates.

V. PRICE CAP CARRIERS

A. Exogenous Costs

1. Exogenous Cost Changes Associated With Inside Wire

a. Petitions

16. Several petitioners contend that Bell Atlantic failed to include an inside wire (ISW) exogenous change in its 1991 annual access tariff. Sprint Petition at 2; MCI Petition at 11; AT&T Petition at 4. Two Bell Atlantic companies, New Jersey and Pennsylvania, have ISW amortizations that will be completed in 1992. MCI Petition at 11-12; AT&T Petition at 4. Petitioners cite Bell Atlantic's Description and Justification (D&J) which states that it has not included an exogenous cost adjustment for ISW amortizations because none of them expires in the tariff period of July 1, 1991 through June 30, 1992. Sprint Petition at 2; AT&T Petition at 4-5. Sprint claims that this failure is incorrect because the *LEC Price Cap Reconsideration Order* makes clear that carriers should treat ISW amortizations, not just the completion of these amortizations, as exogenous cost changes. Sprint Petition at 2-3. AT&T notes that other LECs whose ISW amortizations expire outside the tariff year have adjusted their price cap indexes to reflect these exogenous cost changes. AT&T Petition at 6. AT&T estimates that Bell Atlantic's Carrier Common Line rates should be reduced by approximately $3.73 million. *Id.* at 7. In its ARMIS Comments, however, AT&T increases this estimate to $11.1 million. AT&T ARMIS Comments at 6. According to MCI, Bell Atlantic's failure to treat ISW as an exogenous change means that its PCI for Basket 1 should be reduced by $16,313,629. MCI Petition at 12.

17. Sprint argues that the Commission should carefully examine the RBOCs' Common Line and Traffic Sensitive index calculations to determine whether the rates reflect underlying exogenous cost changes. Sprint argues that carriers are incorrectly allocating exogenous costs to the baskets using Part 69 principles. First, Sprint contends that BellSouth, Nevada, Southwestern, and US West claimed exogenous cost increases in the Traffic Sensitive category as a result of ISW amortizations. *Id.* at 3. Sprint argues that it is not clear why the phase out of ISW would generate increases in Traffic Sensitive revenue requirement. *Id.* at 4. Second, Sprint complains that Southwestern and Nevada include an increase in ISW federal income taxes, but the ISW rate base and net return have decreased. *Id.* at 3-4. Finally, Sprint contends that BellSouth and US West have claimed ISW federal income tax reductions that are extremely small relative to the reduction in net earnings. *Id.* at 3. Ad Hoc argues that embedded ISW costs are associated with the Information Origination/Termination equipment that is apportioned between Common Line and Special Access based on the relative number of equivalent lines in use. Ad Hoc Petition at 7-8.

b. Replies

18. Bell Atlantic asserts that it is not required to make exogenous adjustments for inside wire in Pennsylvania and New Jersey until those amortizations are completed in December of 1992. Bell Atlantic Reply, App. A, Item 1.[10] In reply to Sprint, BellSouth claims that a discrepancy arose between taxes on inside wire and net earnings because some of its taxes are based on Total Plant in Service (TPIS). BellSouth Reply at 7-8. Southwestern asserts that it calculates its federal income tax liability on its net operating income after taxes, and that Sprint assumes that federal income tax is calculated on its pre-tax income. US West says that while the relationship between the reduction in federal income tax expense and net earnings may appear to be small, it is not incorrect. US West Reply at 8.[11] *See also* Southwestern Reply at 2-3. Southwestern and Nevada claim that their federal income tax on inside wire was affected by the reallocation of exogenous costs among baskets. Southwestern Reply at 3-4; Nevada Reply at 3-4.

c. Discussion

19. Upon review of the record and analysis of Bell Atlantic's data, we conclude that Bell Atlantic is incorrect in its treatment of inside wire amortization levels and reserve balances for Pennsylvania and New Jersey. While Bell Atlantic has focused on the language of Section 61.45(d)(3) of the Commission's Rules, which refers to "completions of inside wire amortization," the Commission did not specify that effect should be given for completions in the last year only. The Commission's discussion of inside wire amortization in the *LEC Price Cap Reconsideration Order* (at para. 76) indicates that "completion" does not limit adjustments to the last year but to each year in which a change is completed. It stated:

> We find that inside wire amortizations should be treated exogenously. ... Under rate of return regulation, amortization of inside wire would continue to decrease depreciation expense, thereby lowering the rate base, until the amortization was complete. That same effect can be obtained by treating inside wire amortizations as an exogenous cost under price caps.

20. Since Bell Atlantic's amortization level phases down over the three-year period 1990-92 (see Appendix B to this Order, Inside Wire Worksheet 1), to obtain the in-

[10] Bell Atlantic continues to disagree with the analysis provided in petitioners' comments on its ARMIS data. Bell Atlantic ARMIS Reply at 3.

[11] US West also explains that increases in its Traffic Sensitive category reflect changes in the allocation of secondary costs between the Common Line and Traffic Sensitive rate elements. As inside wire is amortized, a larger share of secondary costs is assigned to the Traffic Sensitive category and less to the Common Line rate element. US West says this is not unexpected given the allocation methodology which was employed. US West Reply at 9.

tended effect, exogenous treatment must be applied in Bell Atlantic's case as the amortization amount decreases over time, not just in the final year. This is the method used by rate of return carriers and all other price cap carriers. Reserve balances should, therefore, be adjusted for the completion of the 1990-91 tariff year amortization and adjustment to the expense levels made for the reductions which have taken place for the amortization phase down as the amortization period proceeds. We have calculated overall revenue requirement reductions for the 1991-92 tariff year of $9,522,000, $7,634,000, $3,547,000, and $43,000 for, respectively, the Common Line, Traffic Sensitive, Special Access, and interexchange baskets. (Appendix B, Inside Wire Worksheets 1 and 2.) Bell Atlantic shall reflect these additional exogenous changes in its price cap adjustments.

21. In response to Sprint's objection that BellSouth did not include a federal income tax (FIT) reduction (EXG-1, Line 140) commensurate with its revenue requirement reduction for the inside wire amortization adjustment, BellSouth claims that the apparent shortfall in the FIT reduction is due to the Part 69 allocation principles, particularly to the effect of Part 69 on the allocation of the investment tax credit component of the FIT adjustment. BellSouth Reply at 7. BellSouth, however, fails to demonstrate adequately the effect of the investment tax credit on its overall FIT adjustment.

22. At the current 34 percent FIT rate, the tax rate for ratemaking purposes (before any investment tax credit adjustment) should be about 0.515151 (calculated as 0.34 / (1 - 0.34)) of the total expected net return (EXG-1, Line 130). Thus, BellSouth's total FIT reduction (EXG-1, Line 140, pages 1-4), before any investment tax credit adjustment, should have been about 0.515151 of its total net return reduction (EXG-1, Line 130, pages 1-4). Based on the $1,026,000 total net return reduction reported by BellSouth, this would be about $529,000. BellSouth, however, reported a total FIT reduction of only $149,000, an effective tax rate of only about 0.145 (its $149,000 total FIT reduction divided by its $1,026,000 total net return reduction). This is a considerable difference which we do not believe is completely attributable to the operation of the investment tax credit. Moreover, BellSouth has provided no further justification.

23. We have calculated, therefore, that BellSouth should make an additional net adjustment of $380,000 (0.515151 FIT rate x $1,026,000 net return reduction - $149,000 reported net FIT reduction). Consistent with BellSouth's reported inside wire adjustments, this additional tax adjustment would result in a $755,000 reduction for Common Line, a $290,000 increase for Traffic Sensitive, and an $85,000 increase for Special Access. BellSouth is directed to reflect these changes in its price cap adjustment filing.

24. Other inside wire flow through issues raised by Sprint concern the use of Part 69 for allocation among the service baskets. Sprint challenges inside wire adjustments by BellSouth, Nevada, Southwestern, and US West which increase Traffic Sensitive rates. While the *LEC Price Cap Order* did not require use of Part 69 allocations in attributing exogenous changes to baskets and rate elements,[12] it also did not bar use of Part 69 or any specific cost-based method. Our analysis of the allocations found that the adjustments to the inside wire amortization expense levels for all basket elements in total (EXG-1, Line 100, Pages 1-4) were at levels we expected based on independent calculations of the adjustments to be made. We accordingly deny Sprint's petition on this issue.

2. Exogenous LTS and TRS Cost Change

25. Sprint contends that Ameritech, NYNEX, and Rochester have failed to flow through the entire reduction to their respective Long-Term Support and Transitional Support (LTS and TRS) obligations. According to Sprint, the difference between the amount claimed by these carriers and the information from NECA reports amounts to $375,000 for Ameritech, $182,000 for NYNEX, and $209,000 for Rochester. Sprint further argues that BellSouth laimed a larger exogenous cost increase than is warranted by the NECA calculations. According to Sprint, "[t]he inaccuracies in the flow through of changes in support payments/receipts skew the common line index calculations and cause the common line PCI to be higher than it should be." Sprint Petition at 4.

26. Ameritech claims that the discrepancy cited by Sprint resulted from its existing CCL rate taking effect two weeks after NECA's CCL rate took effect. Ameritech Reply at 3-4. BellSouth states that the apparent discrepancy in its case is due to BellSouth's acquisition of the Hughes Telephone Company, the effect of which is shown separately by NECA. BellSouth Reply at 8. Rochester argues that the change in its support obligations is properly measured by the difference in the support in the access rates filed in April 1991 and the support in its January 1, 1991, pro forma price cap rates, rather than the difference between its current support and the support listed in NECA's February 2, 1991, filing. Rochester Reply at 4-6. NYNEX contends that Sprint incorrectly calculated the reduction. NYNEX Reply at 6, Appendix F-2.

27. BellSouth, Rochester, and NYNEX have adequately explained their handling of LTS and TRS. Ameritech, however, has indicated that its LTS and TRS exogenous change includes $375, 000 to recover the LTS and TRS it owed between February 9, 1991, when NECA last adjusted the support amounts, and February 25, 1991, when Ameritech changed its CCL rate to reflect this prior change. This retroactive ratemaking is not permissible, and we therefore direct Ameritech to remove this $375, 000 from its exogenous change for LTS and TRS.

3. Exogenous Cost Changes Associated with SPF and DEM

a. Petitions and Replies

28. Petitioners raise three main arguments concerning exogenous cost changes associated with Subscriber Plant Factor (SPF) and Dial Equipment Minutes (DEM). First, Ad Hoc contends that all of the price cap LECs, except Bell Atlantic and Pacific, allocated exogenous cost changes attributable to SPF and DEM factors on a Part 69, rather than a cost-causative, basis. Ad Hoc Petition at 4. According to Ad Hoc, Bell Atlantic and Pacific both appropriately allocated exogenous cost changes based on the allocation of primary costs. Ad Hoc argues that this

[12] *See LEC Price Cap Reconsideration Order* at para. 77, *citing LEC Price Cap Order*, 5 FCC Rcd at 6791.

method best complies with the spirit of assigning costs directly to the services for which they were incurred. *Id.* at 5.[13]

29. According to the LECs, the Commission in the *LEC Price Cap Reconsideration Order* required only that exogenous adjustments be allocated on a "cost-causative" basis. They maintain that allocations based on Part 69 are "cost-causative. "These LECs argue that the Commission did not conclude that Part 69 allocations are not cost-causative, but simply declined to foreclose other cost-causative allocation options. GTOC Reply at 8; BellSouth Reply at 6-7; Rochester Reply at 7; SNET Reply at 1-3; Nevada Reply at 3-5; Southwestern Reply at 4-6. NYNEX, Nevada, and Rochester contend that, contrary to Ad Hoc's assertion, cost-causative principles require LECs to shift the allocations of secondary costs among baskets as a result of the transitions of the SPF and DEM factors. NYNEX Reply at 7 and App. H, 1-2; Nevada Reply at 3-5; Rochester Reply at 6-7.

30. In addition, MCI and AT&T contend that several LECs have failed to recognize the effects of expanded local calling areas required by state commissions. MCI Petition at 6; AT&T Petition at 10-14. MCI proposes that the Commission investigate the DEM factor of the LECs in Massachusetts, West Virginia, Georgia, Louisiana, and California where state public utility commissions expanded local calling areas. MCI Petition at 6; *see also* AT&T Petition at 11.[14]

31. The LECs argue that state public utility commission changes in LEC calling areas are not exogenous changes, reasoning that changes in separations factors should result in exogenous cost changes only when the changes in those factors are the result of rule changes, not changes in relative interstate and intrastate usage. They consider changes in local calling areas to be changes in relative usage. GTOC Reply at 9; BellSouth Reply at 1-3. GTOC and Pacific note that "changes in DEM factors" is not listed among the exogenous cost factors in Section 61.45(d)(1) of the Commission's Rules. GTOC Reply at 9-11; Pacific Reply at 2-3.

32. Finally, petitioners raise various arguments concerning the LECs' calculation of these exogenous cost changes. Ad Hoc contends that the Commission should investigate Ameritech's forecast of the exogenous cost changes it attributes to the transition to the 25 percent SPF. Ad Hoc Petition at 9. According to Ad Hoc, almost every other price cap LEC projects a significant reduction in costs associated with this transition. Ameritech, however, shows a substantial cost increase.[15] *Id.*

33. According to Sprint, Rochester miscalculated the exogenous cost change associated with the DEM transition for the Traffic Sensitive category.[16] Sprint contends that Rochester should be required to adjust the DEM transition related net return, plus the associated FIT adjustment for the Traffic Sensitive category and make the necessary index recalculations. *Id.* at 6.[17]

34. MCI and AT&T claim that the price cap LECs' ARMIS data demonstrate that the carriers have understated the exogenous amounts of DEM transition relating to Category 3 Local Switching investment.[18] MCI attributes these misstatements to the failure to correct for overestimates of interstate DEM and inconsistencies between the 1990 DEM factor used in the 1991 annual access filing and the DEM factors in ARMIS 43-04 Reports. MCI cites Wisconsin as an example of this phenomenon. MCI ARMIS Comments at 3. MCI claims that the RBOCs, except Bell Atlantic, use inconsistent DEMs.

35. AT&T claims that ARMIS data indicate that New York and Pacific understate the impact of exogenous changes to their DEM separations factors by at least $4.3 million and $3.9 million, respectively. AT&T ARMIS Comments at 2. AT&T argues that New York and Pacific did not account for the shifted weighting of the DEM separations factor in their 1991 annual access filing. According to AT&T, New York and Pacific based the amount of their exogenous changes on estimates that are not consistent with the actual 1990 results shown in their ARMIS Form 43-04 Reports. *Id.* at 3.

36. In reply to Ad Hoc, Ameritech argues that its SPF was below 25 percent in four of its five jurisdictions when the Commission decided to phase in a uniform 25 percent SPF. Ameritech maintains that its SPF must now increase to achieve a transition to 25 percent. Ameritech Reply at 2-3. The LECs generally argue that MCI and AT&T misinterpret the Commission's Rules in their comments on the carriers' ARMIS data and their transition to measured DEM. Ameritech, for example, contends that the Commission's Rules state that exogenous changes include changes in the Separations Manual, but the Separations Manual does not contain a change in measured DEM.

b. Discussion

37. The Bureau has reviewed the tariff revisions and the pleadings, We conclude that no compelling argument has been presented that the proposed tariff revisions are patently unlawful so as to require rejection, and that no question has been presented that warrants investigation at this time. We note that the Commission directed LECs to allocate exogenous cost changes on a cost-causative basis. While the Commission did not mandate the use of Part 69 for the allocation of exogenous cost changes, it certainly did not prohibit the use of Part 69 for this purpose.[19] Moreover, we agree with the LECs that the secondary separations effects of expanded local calling areas are not

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[13] MCI claims that the LECs have failed to provide a sufficient level of detail of Category 3 investment to enable the Commission to verify the data and determine whether the carriers have flowed through the effect of the transition to the allocation of Category 3 Switching investment. MCI Petition at 4

[14] AT&T specifically refers to Pacific and GTOC California for failing to make adjustments for local calling areas. AT&T Petition at 13. In addition, based on ARMIS data, AT&T estimates the total revenue impact of these changes as $29,898,000. AT&T ARMIS Comments at 5.

[15] According to Ad Hoc, Pacific is the only other price cap LEC that claims a SPF related increase, but Ad Hoc contends that Pacific can probably attribute this increase to the near completion by the carrier of the transition to the 25 percent SPF.

[16] Rochester estimates a $988,000 decrease in its rate base. According to Sprint, this should generate a $111, 000 reduction to its net return rather that the $104,000 claimed by Rochester.

[17] Rochester states that $7,000 of the understatement of the DEM factor adjustment cited by Sprint is due to rounding errors, and Rochester has filed for special permission to correct these errors. Rochester Reply at 2 n. 3. Special permission subsequently was granted by the Tariff Division.

[18] MCI estimates a $33 million shortfall in DEM transition reductions.

[19] See our discussion of this issue in Section V.A. 2, *supra*.

included in the Commission's list of exogenous cost changes and carriers are therefore not required to make exogenous cost adjustments to reflect these effects.

4. Exogenous Cost Changes Related to Taxes

38. MCI contends that LECs may have overstated the exogenous change for the tax effects of the Tax Reform Act of 1986. MCI estimates that the LECs should have been amortizing excess deferred taxes in an amount between $200-250 million per year for 1988 and 1989. MCI Petition at 13. Yet, according to MCI, the LECs have exogenous changes that would reduce amortization by $59.1 million -- almost one-third of that in prior years. MCI also claims inconsistencies in the analysis of several carriers. *Id.*

39. Several carriers assert that they have properly reported the flowback of excess deferred taxes. United Reply at 2; Ameritech Reply at 6-7; Southwestern Reply at 11; GTOC Reply at 5-7, *citing* GTOC TRP Form EXG-1, col. F. Rochester and Nevada assert that this flowback has little or no effect on their rates, so that MCI's allegations are not applicable to them. Rochester Reply at 8-9; Nevada Reply at 5-6. Pacific and Nevada note that they will complete flow throughs "in a partial and sporadic fashion, depending on the remaining useful tax life of the property giving rise to the excess tax reserve." Pacific Reply at 6-7; Nevada Reply at 7, *quoting LEC Price Cap Reconsideration Order*, para. 72 n. 91.

40. NYNEX also claims that AT&T compared the flowback of excess deferred taxes at the wrong levels and incorrectly calculated the flowback of the excess deferred taxes portion of New York's exogenous adjustment for the combined effects of flowback of excess deferred taxes and investment tax credits. NYNEX Reply at 4-5. Furthermore, NYNEX claims AT&T ignores the increased return effect and the taxes on that return and that AT&T makes other errors. *Id.* at Appendix D-2.[20] US West explains that it calculates these exogenous adjustments for deferred taxes by projecting surplus deferred tax and investment tax credit levels for the 12-month period beginning July 1, 1991, and comparing these projections to amounts used in US West's 1990 Annual Access Charge Tariff filing. US West simply contends that an examination of its Workpaper 1 should allow the Commission and these petitioners to conclude that US West's exogenous cost adjustments for excess deferred taxes are accurate. US West Reply at 9-11.

41. BellSouth claims that MCI advocates a straight-line amortization of excess reserve taxes beginning in 1988. BellSouth Reply at 3-4. BellSouth argues that its method, basing amortizations on 1988 book depreciation rates, is preferable. *Id.* at 4. BellSouth maintains that AT&T's criticism of its flowback is based on an improper assumption regarding the breakdown of flowback resulting from repeal of the investment tax credit and that resulting from excess deferred taxes. *Id.* at 4-5.

42. Rochester claims it inadvertently omitted an exogenous adjustment for reduction in state property taxes assessed on central office equipment, and has requested special permission to correct this omission. Rochester Reply at 2 n. 3.[21]

43. After reviewing the excess deferred tax exogenous flowback claims of the price cap LECs, using data contained in the tariff filings and individual carrier data requests, it appears that the majority of the price cap LECs have flowed back the excess in a reasonable manner and, thus, an investigation of this issue is unwarranted. This general conclusion does not, however, apply to BellSouth and Pacific. Indeed, our review indicates that BellSouth and Pacific have large unexplained decreases in their excess deferred tax flowback amounts. According to our analysis, BellSouth and Pacific reduced their excess deferred tax flowback amount for the test year by 25.9 percent and 18 percent, respectively, compared to the 10.3 percent average percentage reduction of the other five RBOCs. Thus, on a percentage basis, BellSouth and Pacific filed reductions in excess deferred taxes that were 151 percent and 75 percent higher, respectively, than the average of the other five RBOCs.

44. The carriers' replies do not adequately explain this anomaly. BellSouth's reserve deficiency amortization does not end until December 31, 1991, and BellSouth has not demonstrated how it differs from the other RBOCs in this area. As the following table shows, BellSouth's depreciation rates do not differ appreciably from the depreciation rates of the five RBOCs which flowed back excess deferred taxes in a more reasonable manner.

Depreciation Rates

	1988	1989	1990
BellSouth	7.98%	7.78%	7.75%
Five Other RBOCs	7.41%	7.32%	7.29%

45. Accordingly, because we cannot find proper justification for BellSouth's excessive decrease in excess deferred tax flowback for the test year, for the purposes of acting on its annual filing we limit BellSouth's test year flowback to 10.3 percent (the RBOC average excluding BellSouth and Pacific) of its base year amount. The effects of this adjustment are as follows:

BellSouth test year interstate flowback	$13,452,691
Adjusted test year interstate flowback ($18,154,406 - $1,869,904)	$16,284,502
Difference	$2,831,811
Revenue requirement effect ($2,831,811 * 1.5151515)	($4,290,623)

We allocated the revenue requirement effect to the baskets consistent with the ratio contained in BellSouth's EXG-1 for FIT. The allocated effect is as follows:

CL	TS	SA
($2,102,405)	($1,703,377)	($484,841)

[20] NYNEX states in its reply that it will file tariff revisions to remove the effect of the $2.5 million exogenous cost increase related to the calculation of the Maine personal property tax contained in its April 2, 1991, filing. NYNEX Reply at 2. NYNEX made this filing on June 5, 1991. *See* NYNEX App. No. 14. *See* Ad Hoc Petition at 8-9 and AT&T Petition at 8 (arguing that the Maine tax change should not be given exogenous treatment).

[21] Rochester subsequently filed Transmittal No. 176, scheduled to be effective July 1, 1991, to reflect this change.

46. Similarly, we find that Pacific has failed to justify its flowback of excess deferred taxes. Pacific advances several arguments in an effort to account for its large decrease. These arguments do not provide an adequate explanation for Pacific's anomalous decrease in flowback of excess deferred taxes, however, as they apply equally to all of the RBOCs and no other carrier reports a similar decrease.[22]

47. As we did with BellSouth, we compared Pacific's depreciation rates for 1988-90 to the average depreciation rates of the five RBOCs that flowed back excess deferred taxes in a reasonable manner to determine whether Pacific's experience was noticeably different. As the table below shows, Pacific's depreciation rates do not differ appreciably from the depreciation rates of the five RBOCs that flowed back excess deferred taxes in a reasonable manner.

Depreciation Rates

	1988	1989	1990
Pacific	7.91%	7.38%	7.54%
Five Other RBOCs	7.41%	7.32%	7.29%

48. Accordingly, since we find no proper justification for Pacific's excessive decrease in excess deferred tax flowback for the test year, we are making an adjustment to Pacific's flowback amounts. For the purposes of this filing, we limit Pacific's test year flowback to 10.3 percent of its base year amount. The effects of this adjustment are as follows:

Pacific test year interstate flowback	$ 8,190,624
Adjusted test year interstate flowback ($10,039,624 - $1,034,081)	$ 9,005,543
Difference	$ 814,919
Revenue requirement effect (FIT) ($814,919 * 1.5151515)	($1,234,726)
Pacific test year return	$ 208,000
Adjusted return ($1,034,081 *.1125)	$ 116,334
Difference	($ 91,666)
Revenue requirement effect (Return)	($ 91,666)
Pacific test year FIT from return	$ 107,152
Adjusted test year FIT from return ($116,334 *.34 * 1.5151515)	$59,930
Difference	($ 47,222)
Revenue requirement effect	($ 47,222)

We allocated the revenue requirement effect to the baskets based on the ratios contained in Pacific's EXG-1 for FIT and Return. The allocated effect is as follows:

	CL	TS	SA
Expense FIT	($621,067)	($423,511)	($190,148)
Return FIT	($ 23,753)	($ 16,197)	($7,272)
Return	($ 35,475)	($ 40,700)	($15,491)
Total	($680,295)	($480,408)	($212,911)

5. Allocation Between Regulated and Non-Regulated Activities

49. MCI complains that no LEC includes an exogenous change to account for regulated to non-regulated cost shifts for either investments or expenses. MCI Petition at 7. MCI shows that several carriers overstated regulated investment for 1990 by approximately $170 million. MCI argues it is unreasonable to assume that no carrier would need to reallocate investment. MCI concedes that it is unable to detect or prove the full amount of the inaccuracies in the LEC projections because of the current forecasting rules and limited amount of information provided by the LECs. *Id.* at 8. MCI believes that the Commission should also require the LECs to reduce the PCI by an exogenous change in the amount of non-regulated expense reallocations. MCI claims that the price cap LECs have overstated regulated expenses by about $131 million, based on what was projected for the test period. *Id.* at 9-11.

50. Ad Hoc argues that the Commission should require price cap LECs to document their asserted reallocations of investment and expense from regulated to non-regulated activities even though there is no direct impact on PCIs. Ad Hoc Petition at 11-12. Ad Hoc contends that the allocation of investment and expenses between regulated and non-regulated activities affects the rate of return that a carrier's regulated activities will generate, which affects whether the carrier will have to share earnings with ratepayers and the extent of sharing required. *Id.* at 12.

51. Several LECs assert that the only reallocations of costs from regulated to non-regulated activities requiring exogenous treatment are those completed pursuant to Section 64.901 of the Commission's Rules,[23] 47 C.F.R. § 64.901. These LECs contend that the exogenous adjustments suggested by MCI fall outside the ambit of Section 64.901. Bell Atlantic Reply, App. A, Item 6 at 1-2; GTOC Reply at 2-4; BellSouth Reply at 9-10; NYNEX Reply at App. B-2. Nevada states that MCI's allegations are not applicable to it, because its actual 1990-91 non-regulated investment is equal to its projected non-regulated investment in its 1990 annual access filing. Nevada Reply at 8. Nevada contends that MCI's analysis is flawed, because it does not account for directly assigned investment. *Id.* at 8-9. Southwestern contends that its non-regulated investment declined in the 1990-91 access period, contrary to the assumption made by MCI. Southwestern Reply at 7-11.

52. NYNEX claims that MCI's assertion that many LECs have experienced an increase in revenues from non-regulated inside wire maintenance services does not apply to NYNEX, which experienced a $71.2 million

[22] Pacific contends that its excess deferred taxes are related to the recovery of plant investment and that differences between book expense and tax deductions are caused mainly by different useful lives, different depreciation methods, different bases, and different gain or loss recognition methods for plant. Pacific Reply at 6-7.

[23] Section 64.901 requires carriers to base regulated and non-regulated allocation factors on a three-year forecast of relative use. Ameritech asserts that neither MCI nor Ad Hoc adequately supports its allegations that these allocation factors are inaccurate, and notes that this three-year forecast would not necessarily yield the same results as a comparison of Part 32 accounts. Ameritech Reply at 4-6.

reduction in non-regulated revenues. NYNEX Reply at 4. NYNEX also states that its companies' non-regulated expenses increased by $91.0 million in 1990. *Id.* at Appendix C-1. In addition, NYNEX argues that MCI makes numerous methodological errors and that when these are corrected, the NYNEX companies' forecast percentage of regulated costs for 1990 is substantially lower than their actual regulated percentage for 1990. *Id.* at 3-4. Thus, NYNEX claims that its companies' current rates incorporate a higher allocation of costs to non-regulated activities than have actually occurred. *Id.* at Appendix B-4.

53. In reply to Ad Hoc, the LECs assert that existing ARMIS reporting requirements are adequate to track the reallocations involved. They also contend that any additional reporting requirements would be unduly burdensome, since these reallocations do not usually result in adjustments to the price cap indexes. BellSouth Reply at 9; Bell Atlantic Reply, App. A, Item 6 at 3; GTOC Reply at 4-5; US West Reply at 5-7.

54. The LEC replies appear to address this question adequately. Petitioners have not shown that the LECs have failed to follow the Commission's Rules in allocating investment and expense between regulated and non-regulated activities. Accordingly, we conclude that this issue does not warrant investigation at this time.

6. Reserve Deficiency Amortizations

55. Although no petitioner addressed this matter, we examined the adjustments required for the expiration of the Reserve Deficiency Amortization (RDA) which will be fully amortized for all price cap LECs on December 31, 1991, with the exception of Michigan and GTOC of the North Missouri whose expirations are not scheduled until, respectively, December 31, 1992 and December 31, 1993. We found that carriers made the required adjustments for the expense associated with the amortization of RDA. Not all carriers, however, made accurate adjustments to their reserves and net rate bases for the differences between tariff year 1990-91 and tariff year 1991-92.

56. Because the RDA was originally set up on a straight-line amortization basis (*i.e.*, it is amortized at a level amount over time), and since it is generally set to expire at the mid point of tariff year 1991-92, the amortization expense level for tariff year 1991-92 is only one-half of the amount for tariff year 1990-91. Under this condition, with the amortization expense level for the 1991-92 tariff year at one-half of the previous tariff year level, the reduction in the rate base --*i e.*, the difference in the average rate base for the two periods, before accounting for the effect of the associated accumulated deferred income taxes-- is equivalent to 75 percentof the 1990-91 tariff year amortization amount.

57. Two carriers, Pacific and SNET, did not make any adjustments to their reserves and net rate bases as part of the required RDA adjustment. Two others, BellSouth and Southwestern, reduced the rate base by about onethird the expected amount. New York made a reduction of only one-half the required amount. In contrast to all others making adjustments, Bell Atlantic decreased its reserve and increased its rate base for the expir.tion of RDA. Ameritech, New England, Nevada, and US West all made acceptable adjustments at a level equal to, or in excess of, the expected 75 percent of their 1990-91 tariff year amortization expense levels.

58. We used the amortization expense adjustments made by the filing carriers, to calculate the additional adjustments for LECs that did not make sufficient reductions to their rate bases (Appendix C, RDA Worksheet 1). The adjustments to net rate base resulted in the following revenue effect decreases:

	CL	TS	SA	IX
BellAtlantic	$2,935,000	$2,352,000	$1,094,00	$16,000
BellSouth	$2,650,000	$ 865,000	$380,000	$0
New York	$814,000	$1,118,000	$386,000	$6,000
Pacific	$2,753,000	$1,520,000	$645,000	$0
South-western	$2,634,000	$1,790,000	$1,556,000	$0
SNET	$284,000	$414,000	$77,000	$0

These carriers shall reflect the additional exogenous change reductions in their price cap adjustment filings.

59. Finally, Contel of Virginia did not include RDA adjustments in its EXG-1 filing. Contel, in response to Bureau staff inquiry, provided the Commission with the data that should have been reflected in its filing. The data provided include revenue effect reductions of $253,000 and $9.000, respectively, in the Common Line and Special Access baskets, and an increase of $63, 000 in the Traffic Sensitive basket. Contel shall reflect the additional exogenous change amounts in its price cap adjustment filings.

B. New Services

60. MFS argues that US West failed to incorporate, in its price cap plan, two new DS3 services -- Self-Healing Alternate Route Protection Service (SHARP), introduced in September 1990, and Self-Healing Network Service (SHNS), introduced in August 1990. MFS Petition at 1-2. MFS contends that US West's annual access filing contains substantial changes to the rates for SHARP and SHNS, but the carrier's TRPdoes not reflect any changes for the DS3 service category. MFS requests thatthe Commission investigate the filing and require US West to submit revised TRP data that include these new services within its price cap plan. In the alternative, MFS asks us to clarify that US West must submit quarterly reports comparing actual operating results with projections required by the Commission for new services that remain outside of price cap regulation. *Id.* at 3.

61. US West explains that both SHNS and SHARP have been included in its price cap filingand says that the conclusions of MFS to the contrary appear to be the result of, first, the erroneous assumption of MFS that both these services would only be reflected in the DS3 service categories and, second, the very small demand for these two services during the base year period. US West Reply at 13-14.

62. Under the LEC price cap program, new services are filed and supported by LECs outside of the price cap baskets and bands.[24] These services are then folded into

[24] *LEC Price Cap Order*, 5 FCC Rcd at 6825, paras. 319-321; *LEC Price Cap Reconsideration Order*, at paras. 127-128.

price caps at the first annual tariff filing following the base year in which the services were offered which is between 6 and 18 months after introduction.

63. The US West case illustrates a general problem with LEC treatment of new services. In the support material accompanying the pending price cap tariffs, LECs do not in general identify the new services they introduced in the base year of 1990, the tariff transmittals in which they were filed, the base year demand quantities and rates, or the assignment of these services to individual baskets of subindexes. Although we have no reason to question US West's treatment of these services, we believe this information is necessary to verify the accuracy of the indexes and the compliance of LECs with the price cap rules. For this reason, we are directing a supplemental filing by the price cap LECs to obtain this information prior to the scheduled July 1 effective date of the pending tariffs. We deny MFS's request for investigation and other relief at this time.

C. Non-Recurring Charges

64. MCI states that some carriers have sharply increased their non-recurring charges (NRCs) for monopoly services without reducing the associated recurring rates. MCI contends that Bell Atlantic, Pacific, and US West have increases that raise questions of discrimination. MCI suggests that these carriers must demonstrate that their increases are just and reasonable before the rates become effective. MCI Petition at 16-22.

65. Similarly, Ad Hoc asserts that several LECs have set rates for Special Access non-recurring charges at unreasonably high levels even though the carriers' filings are within cap and band limits. Ad Hoc recognizes that within-cap, within-band tariff filings are presumptively lawful and petitioners seeking suspension have a heavy burden, but claims that it has met the burden for suspension of these rate increases. Ad Hoc Petition at 14-16.[25] Ad Hoc also claims other carriers have increased Special Access non-recurring charges even though these carriers previously raised Special Access non-recurring charges to full recovery levels. Ad Hoc claims that if these rate increases do not warrant suspension, they certainly warrant investigation. *Id.* at 17.[26]

66. Pacific and Bell Atlantic claim that their revisions to their non-recurring charges are below-cap and within-band, and therefore need no cost support. Pacific Reply at 8-9; Bell Atlantic Reply, App. A, Item 5. Bell Atlantic also provides some Task Oriented Costing studies which purport to show its NRCs are cost-justified. Bell Atlantic Reply, App. A, Item 5. US West explains the increases in its NRCs as part of a continuing effort to establish NRCs which cover underlying costs. US West also attributes the increases to changes in customer ordering patterns. US West Reply at 3-5.

67. The LECs appear to be correct in stating that these rate changes are within the price cap limits. We do not find that the petitioners have overcome the presumption of reasonableness that attaches to such rates.

D. Traffic Sensitive and Special Access Pricing Trends

68. Ad Hoc argues that most of the price cap LECs have taken advantage of the pricing flexibility of the price cap plan to set rates high for services that face little competition while keeping rates low for competitive services. Ad Hoc contends that Local Switching rates are set at or near the upper end of the SBI, but Local Transport rates are within range of the lower SBI. Ad Hoc claims that Special Access analog and digital service rates follow a similar trend. Ad Hoc Petition at 17-19.

69. BellSouth disagrees with Ad Hoc, and maintains that the price cap rules were not intended to maintain the existing relationships between prices. BellSouth Reply at 10-11. NYNEX asserts there is no merit toAd Hoc's proposal that the Commission "monitor" rate changes that are within the price cap SBI limits for pricing trends that might produce unjust and unreasonable rates. NYNEX asserts that since the Commission adopted the SBI limits to give the LECs flexibility to depart from rates based on fully distributed costs, this proposal is inconsistent with both the letter and the spirit of the price cap rules. NYNEX Reply at 7. NYNEX rejects concerns thatprices under price cap regulation may move away from the fully distributed cost standard. NYNEX notes that the price cap rules incorporate limited pricing flexibility to allow the LECs to price more efficiently, arguesthat monitoring of individual rates for services is not required, and notes that the Commission rejected additional reporting requirements to evaluate whether rates are just and reasonable. *Id.* at Appendix I-2.

70. The rates questioned by petitioner appear to comply with the price cap rules. The petitioner does not present evidence sufficient to overcome the presumption of reasonableness so as to justify suspension or investigation of these rates or modification of the price cap monitoring requirements.

E. Distance Sensitivity

71. CompTel says that the Commission allows distance sensitive rate levels for Transport and Special Access services, but Commission rules do not prescribe the degree of distance sensitivity. CompTel Petition at 2. Therefore, CompTel concludes, the reasonableness of distance sensitive rates depends on a general statutory standard that rates must be related to underlying service costs. CompTel argues that the LECs' Transport rates are overly distance sensitive and are not related to underlying costs, and the carriers have not justified this departure from cost. CompTel claims that such rates are facially unjust and unreasonable and unjustly discriminatory. *Id.* at 4.[27] According to CompTel, excessively distance sensitive rates give AT&T an unfair advantage due to the "geographic reach of the ubiquitous network it inherited at divestiture. "CompTel contends that this discrimination harms competition by promoting inefficient investment decisions because IXCs other than AT&T have incentives to construct additional points of presence. *Id.* at 13-14.

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[25] Ad Hoc seeks suspension of NRCs filed by Pacific.

[26] Carriers in this category include US West, Bell Atlantic, and BellSouth.

[27] CompTel contends that other Commission proceedings have demonstrated that the costs underlying Transport services are not distance sensitive. CompTel Petition at 4-6. In addition, CompTel argues, the wide variations in the distance sensitivity of the LECs' rates for equivalent services provide evidence that these rates do not reflect costs. *Id.* at 612.

72. Some carriers argue that the costs of different services may have different sensitivities to distance, based on the blend of Transport technologies for that service and the effective fill of the Transport facilities. Bell Atlantic Reply, App. A, Item 7; Ameritech Reply at 8; Pacific Reply at 9-10. Some LECs assert that this is not the proper forum for CompTel to raise its allegations, or that CompTel has not provided sufficient basis on which to initiate an investigation. BellSouth Reply at 10 n. 14; Ameritech Reply at 7-8; Southwestern Reply at 14-15; Bell Atlantic Reply, App. A, Item 7. Southwestern and Ameritech observe that the distance sensitivities of the rates cited by CompTel were developed under rate of return regulations and therefore CompTel's petition is more properly construed as a petition against using existing July 1, 1990, rates as initial price cap rates. Southwestern Reply at 16; Ameritech Reply at 8. Pacific asserts that CompTel overstates the differences in distance sensitivity in its case. Pacific Reply at 10-11. Southwestern argues that, in its case, CompTel's analysis shows that its rate revisions are less distance sensitive than its current rates. Southwestern Reply at 16-18. *See also* NYNEX Reply at 6, Apps. G-2, G-3. US West generally agrees with these arguments and also observes that similar rate structures have not been found unreasonable in the past. US West Reply at 16.

73. We note that CompTel has raised the issue of the distance sensitivity of Transport rates in a number of proceedings currently pending before the Commission. We believe that this issue is more properly addressed in a broader proceeding than in the Bureau's review of the LECs' annual access tariff filings. We view seriously allegations that rates do not appropriately reflect underlying costs of providing service. On the present record of this proceeding, however, we conclude that an investigation of the filed rates is not warranted. Accordingly, we deny CompTel's petition for investigation.

F. Subscriber Line Charges

74. The DC PSC petitions the Commission to investigate Bell Atlantic's Subscriber Line Charge for the District of Columbia. The DC PSC claims that Bell Atlantic used improper growth rates for developing its revenue requirements. DC PSC Petition at 2. The DC PSC contends that Bell Atlantic developed its growth rate by comparing the total company subject to separations costs for 1989 and 1990. Instead, the DC PSC suggests that the growth in the base factor portion (BFP) revenue requirement should be used to calculate the Subscriber Line Charge. *Id.* at 3.

75. Bell Atlantic discounts DC PSC's contention that its Subscriber Line Charge is too high, claiming that the Subscriber Line Charge in the District of Columbia is the lowest in the country, and Bell Atlantic's reduction in its Subscriber Line Charge is the largest in years. Bell Atlantic also asserts that its growth factor for its BFP is 3.17 percent, and DC PSC's suggested BFP is based on the double-counting of some separations cost reductions. Bell Atlantic Reply, App. A, Item 2.

76. We note that Subscriber Line Charges for the District of Columbia will decline significantly July 1. DC PSC suggests that a different method of calculation might produce a lower Subscriber Line Charge in the District of Columbia. Nothing in the record before us, however, gives us sufficient reason to believe that the Subscriber Line Charge filed by Bell Atlantic is likely to be unreasonable so as to require an investigation at this time. We therefore deny DC PSC's petition.

G. Miscellaneous Errors in Index Calculations

77. Sprint claims it has found errors in the index calculations of Southwestern. Sprint contends that in calculating base period demand times proposed rates for Transport service, Southwestern used lower rates than those contained in its tariff. Sprint Petition at 5. This miscalculation, claims Sprint, might affect Southwestern's API so that it exceeds the PCI. *Id.* at 5-6.

78. AT&T notes that US West, Bell Atlantic, Rochester, and United have included growth in Special Access surcharge lines in their calculation of the "g" factor used in the Common Line PCI.[28] AT&T at Appendix K. This results, AT&T claims, in an underestimate of the "g" factor.

79. Several LECs claim that, contrary to AT&T's assertions, the "g" factor in the PCI formula is intended to include Special Access surcharges, and that the "g" factor would be higher without Special Access surcharges. Rochester Reply at 3-4; SNET Reply at 3; Bell Atlantic Reply, App. A, Item 5. SNET and Rochester argue that, in their cases, the inclusion of surchargeable Special Access lines has a *de minimis* effect.[29] SNET Reply at 3; Rochester Reply at 3. Southwestern maintains that the inconsistency in its Traffic Sensitive API results from including revenue from meet point billing rates in its TRP Form RTE-1. Southwestern asserts that its meet point billing agreements are filed in NECA's Tariff F. C. C. No. 4, rather than in its access tariffs. Southwestern Reply at 12-13. US West, on the other hand, acknowledges that the "g" factor, as calculated pursuant to Section 61.46(d) of the Commission's Rules, excludes minutes of use (MOU) growth on Special Access surcharge lines. Nevertheless, US West contends that MOU growth on Special Access surcharge lines is similar to that on Switched Access lines and therefore US West applies the same growth factor to both Special Access surcharge and Switched Access lines. Moreover, US West says that by using this approach, it properly includes the impact of Special Access surcharge line growth in accordance with the Commission's Rules. US West Reply at 14-16.

80. We find that Southwestern has incorrectly computed its local switching Service Band Index and Traffic Sensitive basket index. Meet point billing revenue should not be subtracted from Southwestern's tariffed local switching revenue to compute the weights used in the SBI or API. Southwestern shall recompute its Local Switching and Traffic Sensitive indexes to remove the effect of subtracting the meet point billing revenue.

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[28] *See* Section 61.45(c) of the Commission's Rules, 47 C.F.R. § 61.45(c).

[29] United agrees with AT&T that exclusion of surcharges more accurately reflects growth factors. However, it asserts that the effect of this exclusion was too small to reflect in its rates. United Reply at 2-3.

81. Growth in Special Access surcharge lines should be excluded in the calculation of the "g" factor. The Special Access surcharge is assessed because these lines generate no Carrier Common Line minutes, even though they use the local loop. The revenues are properly included in the computation of the Carrier Common Line rate under price caps because the Common Line costs recovered by the Special Access surcharge would have to be recovered in some other Common Line rate element. The "g" factor, on the other hand, is the growth in minutes per line which creates those minutes. Because the Special Access surcharge lines do not generate Carrier Common Line minutes, they should be excluded in the computation of the "g" factor.

82. We also note that US West has computed its SBIs and APIs using revenue weights which are rounded off to six decimal places. This rounding results in an understated SBI for the Voice Grade, Metallic, and Telegraph service category, and in an understated API for the Special Access basket, which is actually above the PCI. We direct US West to recompute these indexes without the rounding, and adjust its rates to bring its Special Access rates into compliance with the price cap rules.

VI. RATE OF RETURN CARRIERS

83. The rate of return LECs have developed their rates using the same methods as in prior years, basically by first projecting overall investment, expenses, and demand and then applying separations methods and the allocations methods in the Part 69 Rules to develop individual rate elements targetted to an 11.25 percent rate of return.

84. As in past years, we have conducted an independent statistical review of the projections of investment, expenses, and demand. This review is intended to provide a consistent, comprehensive, and reliable basis for evaluating LEC projections, and for identifying likely errors. If the statistical review indicates that projections are improbable and might produce excessive rates, we then examine the justification for those projections in the support material, petitions, and replies. If those projections still appear unjustified, we have computed adjustments. This analysis and its results are discussed in detail in Section VI. A, *infra*. In Section VI. B, *infra*, we discuss other rate development issues for individual rate of return LECs as raised by the petitions or our own review.

A. Bureau Analysis of Rate of Return Carriers' Projections

1. TRP Cost Analysis

a. Introduction

85. We have reviewed LECs' projections of unseparated costs based on the methods used in the *1990 Access Tariff Order*.[30] Only those LECs that have not elected price cap regulation are required to make these projections. We have therefore performed our trend analysis of TRP data for six company study areas (COSAs) compared with 96 COSAs in the 1990 TRP.[31] Unlike previous years, we have not attempted a cross section analysis, in recognition of the few Tier 1 study areas that remain regulated under rate of return. The remainder of our previous analysis, however, remains valid.

86. This Section presents the analysis of Telephone Plant in Service (TPIS) and Expense Less Depreciation (ELD), two important categories of unseparated costs which lend themselves to statistical analysis based on data provided by LECs in the TRP.[32] Other important cost categories, such as depreciation and taxes, are discussed in other Sections. The analysis of unseparated TPIS and ELD consists of a trend analysis that identifies forecasts of aggregate costs that are substantially higher than the historical trend.

b. Report Card Tests

87. An important part of the trend analysis consists of report card tests. Report cards measure the accuracy with which LECs have forecasted TPIS and ELD in previous annual access filings.[33] In order to determine the accuracy of each LEC's forecasts, we rely on the three most recent report cards, for the test years in the 1988, 1989, and 1990 annual access filings. The performance of each LEC, as indicated by its report card record, is an important factor in determining the confidence we place in its test year projections, as discussed in the *1988 Access Tariff Order*.[34]

88. We devised two report cards for use in reviewing costs in the 1991 annual access tariff review. The first is for TPIS and the second is for ELD. The tests are constructed identically. LECs' forecasts for the 1988 test year are compared to the actuals for that year and the percentage differences between the forecasts and actuals are calculated. Forecasts and actuals for the 1989 and 1990 test years are compared in the same manner. For the 1990 test year (July 1990 through June 1991) first-half actuals were trended forward because actuals are not yet available for the second half. Trending the available actuals in this manner provides a reasonable measure of forecast accuracy. The trend rate of growth chosen was that projected by the LECs during the 1991 test year.

89. A report card test was developed consisting of a weighted combination of the 1988, 1989, and 1990 percent differences. Less emphasis is placed on the accuracy of earlier forecasts and more emphasis on the accuracy of more recent forecasts. Hence we assign lower numerical weights to earlier report cards than to later report cards. Aweight of 1 is assigned to the 1988 results, a weight of 2 is assigned to the results for 1989, and a weight of 3 is assigned to the results for 1990. Using these weights, a weighted average percent difference is developed for TPIS and ELD, respectively, and designated as report card tests for TPIS and ELD. The report card tests display the overall accuracy of the LECs' forecasts during the last three test years. To the extent that LECs have over-

[30] Annual 1990 Access Tariff Filings, Memorandum Opinion and Order, 5 FCC Rcd 4177 (Com. Car. Bur. 1990) (*1990 Access Tariff Order*).

[31] A COSA generally consists of the operations of a LEC in a particular state.

[32] Data for the analysis are contained in Chart COS-7 of the 1991 TRP and previous TRPs.

[33] Report card data are contained in the TRPs. Report cards also measure the accuracy with which LECs have forecast minutes of use in previous annual access tariff filings.

[34] *See* Annual 1988 Access Tariff Filings, Memorandum Opinion and Order, 3 FCC Rcd 1281, 1285 (Com. Car. Bur. 1987) (*1988 Access Tariff Order*).

forecasted TPIS or ELD by more than 2 percent on average during the last three test years, the LECs receive a failing grade for TPIS or ELD, respectively. This 2 percent boundary represents a change from the 1 percent boundary applied last year. We have increased the range in order to allow for the possible introduction of error related to trending actuals for the 1990 test year. The report card tests for TPIS and ELD are displayed in Appendix F.

90. As in our previous access Orders, LECs that have poor report cards are subject to more stringent conditions both in determining whether their forecasts should be reduced and in the severity of the reduction. Adoption of these evaluation procedures will ensure that companies with good report cards have sufficient flexibility to forecast reasonable changes in aggregate costs and at the same time guard against their departing unreasonably from historical experience. On the other hand, for companies which have failed the report card test, less credence will be placed in forecasts which depart from historical experience.

c. Trend Analysis

91. The trend model for TPIS includes a constant term, a time\trend variable, and a variable to account for the change to Part 32 of the Rules on January 1, 1988. Details of the model are given in Appendix F.

92. The ELD trend was estimated with a constant and a time trend. We do not include the seasonal variables nor the accounting change variable as we did last year, because we find that these variables do not have a significant effect on our forecasts for the COSAs remaining in our analysis this year.

93. The same methods were employed to derive TPIS and ELD adjustments, and these methods are the methods generally employed in our analysis last year. In the *1990 Access Tariff Order*, if the LEC "failed" its report card we reduced forecast growth above an upper boundary, represented by the LEC's historical mean growth rate plus one standard deviation, to the upper boundary. We reduced forecast growth above another upper boundary, represented by the LEC's historical mean growth rate plus a 95 percent confidence interval (approximately two standard deviations), if the LEC "passed" its report card. The results of the trend analysis are displayed in Appendix F.

2. TRP Demand Analysis

94. We have reviewed LECs' projections of Carrier Common Line (CCL) and Traffic Sensitive (TS) minutes of use (MOU) using the methods applied in the *1990 Access Tariff Order*. We have analyzed these forecasts in the 1991 TRP and have ordered adjustments when deemed appropriate.

95. We have analyzed the LECs' forecasts of Carrier Common Line (CCL) and Traffic Sensitive (TS) minutes of use using a combination of report card tests and trend analysis. As we did in the review of 1990 annual access filings, we have performed a report card analysis of the LECs' MOU forecasts, computing a weighted average of the percent error of the forecasts for each COSA. Report cards have been devised for use in the 1991 annual access tariff review;one is for CCL and one is for TS. The tests are constructed identically. LECs' forecasts for the 1988 test year are compared to the actuals for that year and the percentage differences between the forecasts and actuals are calculated. Evaluation of forecasts for the 1989 test year are computed in the same manner. A similar evaluation is applied to the 1990 test year (July 1990 through June 1991), except that actuals for the first half of the year, from July 1990 through December 1990, were trended forward because actuals are not yet available for the second half. Trending the available actuals in this manner will provide a reasonable measure of forecast accuracy. The trend rate of growth chosen was that projected by the LECs' during the 1991 test year.

96. A report card test was developed consisting of a weighted combination of the 1988, 1989, and 1990 percent differences. Because LECs' forecasting methods have improved over time, less emphasis is placed on the accuracy of earlier forecast and more emphasis on the accuracy of more recent forecasts. Hence we assign lower numerical weights to earlier report cards than to later report cards. Aweight of 1 is assigned to the 1988 percent difference, a weight of 2 is assigned to the 1989 percent difference, and a weight of 3 is assigned to the 1990 percent difference. Using these weights, a weighted average of the three report cards is developed for CCL MOU and TS MOU, respectively, and designated as report card tests. The report card tests display the overall accuracy of the LECs' forecasts during the last three test years. To the extent that LECs have underforecasted either CCL MOU or TS MOU by more than 5 percent on average during the last three test years, the LECs receive a failing grade for CCL MOU or TS MOU respectively. The report card tests for CCL MOU and TS MOU are displayed in Appendix G.

97. We have developed a time trend regression model to assess the reasonableness of the LECs' forecasts. The regression models CCL MOU as a function of a constant and a time trend. We do not include the seasonal variables that we included last year because we do not find that these variables have a significant effect on the estimates of COSAs remaining in our analysis this year. The model is described in Appendix G.

98. The trend model for TS MOU also includes a constant term and a time trend variable. We do not include the seasonal variables or WATS variables that were included last year, because we find that these variables do not have a significant effect on the estimates of the COSAs remaining in our analysis this year. The model is described in Appendix G.

99. The same methods were employed to derive CCL MOU and TS MOU adjustments, and these were the methods employed in our analysis last year. In the *1990 Access Tariff Order*, if the LEC failed its report card and forecast demand below its historical mean trend line minus one standard deviation, we adjusted its forecast to the mean minus one standard deviation. If the LEC passed its report card we adjusted its forecast only if it was below the LEC's historical trend line minus a 95 percent confidence interval (approximately two standard deviations). The results of the trend analysis are displayed in Appendix G.

3. Final Adjustments to Forecasts

100. The trend analysis serves the purpose of identifying tentative adjustments to forecasts of costs and demand. The Description and Justifications of the TRP, petitions, replies to petitions, and other relevant cost support material are examined before any final adjustment are made. For Cincinnati, four Centel jurisdictions, and Lincoln we

did not find adequate justification for the companies' forecasts. (*See* Appendix J). In the case of Centel of Nevada we declined to adopt the tentative TPIS adjustment. We find that growth in TPIS might plausibly be explained by unusually high growth projected in investment to serve the rapidly expanding Las Vegas region that Centel serves, a growth level that is also reflected in high projected growth in minutes of use.

B. Other Rate Development Issues

1. Cincinnati

101. Petitions raise questions regarding Cincinnati's separations factors and its calculation of depreciation rates.[35]

a. Separations Factors

102. MCI contends that Cincinnati allocates excessive costs to the interstate jurisdiction based on new separations studies for Central Office Equipment (COE) - Circuit Equipment and Cable and Wire Facilities (C&WF). MCI Petition at 29. AT&T claims that Cincinnati appears to have overassigned investment to the interstate jurisdiction in these areas through erroneous computations and erroneous application of the separations factors prescribed by the Commission's Rules. AT&T Petition at 14-15. AT&T contends that, due to these errors in jurisdictional assignments, Cincinnati overstated its interstate revenue requirement by $2.58 million. *Id.* at 15.

103. Also, AT&T disputes Cincinnati's allocation of investment in Tandem Switching Equipment and Category 3 Interexchange C&WF associated with joint message use. *Id.* at 15-16. AT&T contends that Cincinnati's overstatement of its revenue requirement resulting from erroneous allocations is compounded because the Commission's separations rules allocate several other investment and expense categories based on the carrier's COE and C&WF investment. *Id.* at 16. Therefore, reductions in revenue requirements for these costs require reductions in other revenue requirement components.[36]

104. Cincinnati claims that its separations factors for COE and C&WF are correct, since they are based on a total company basis rather than separate factors in Ohio and Kentucky. Cincinnati Reply at 25-26. Cincinnati also asserts that MCI failed to realize that some interexchange COE and C&WF facilities are used to provide service under contract, and therefore are not access facilities. Cincinnati maintains that, when this non-access investment is removed, the access portion is increasing at 19.3 percent over a two-year period, rather than at 34.6 percent as MCI claims. *Id.* at 26-27. Cincinnati also argues that it must increase interstate investment as a result of transitioning to a 25 percent SPF, and that some increased investment is due to new basic studies. *Id.* at 27-28.

105. Our review of Cincinnati's explanations of its separations methodology and factors does not reveal demonstrable errors that would warrant rejection or investigation and we will therefore deny the petitions on this issue.

b. Depreciation

106. Ad Hoc claims that Cincinnati misread theBureau's ruling concerning depreciation in its *1990 Access Tariff Order*. Ad Hoc Petition at 19-20. Cincinnati uses a 7.6 percent depreciation rate rather than its currently prescribed rate. *Id.* at 19. According to Ad Hoc, the *1990 Access Tariff Order* states that a carrier should use its prescribed depreciation rates for developing tariff rates unless the carrier has a request for rate represcription pending before the Commission. *Id.* at 20.

107. Cincinnati defends its depreciation expense, saying that the Commission allows carriers in its situation to use the average depreciation rate prescribed for carriers in the preceding triennial period while awaiting depreciation rate represcription. Cincinnati also notes that the Commission has required carriers to use January 1 of the year in which they file their depreciation studies as the effective date for represcribed depreciation rates. Therefore, Cincinnati concludes, no disallowance is warranted. Cincinnati Reply at 20-21.

108. The depreciation rates reflected in its tariffs are consistent with those recently accepted by the Commission staff as the result of three-way meetings with Cincinnati and the Public Utilities Commissions of Ohio and Kentucky and their use does not appear unreasonable. We therefore deny Ad Hoc's petition.

2. Centel

a. Other Billing and Collection

109. AT&T contends that Centel has exceeded the Bureau's established 5 percent allocation of Other Billing and Collection (OB&C) costs to Common Line and requests disallowances. AT&T claims that Centel has failed to meet its burden of justifying an allocation in excess of this standard, arguing that Centel used a revenue-based methodology that has been rejected previously by the Bureau. AT&T Petition at App. G.

110.In response to AT&T's contentions that Centel's allocation of OB&C costs to the Common Line rate element is excessive, Centel asserts that AT&T uses amethodology rejected by the Bureau earlier. Centel Reply at 4. However, Centel acknowledges that its "total services" methodology has never been sanctioned by the Commission and that the matter is currently pending before the Commission. *Id.* at 2-4.

111. Although AT&T appears to have misconstrued the precise methodology used by Centel in its filing, AT&T correctly notes that Centel has exceeded the Bureau's established standard allocation of OB&C costs to Common Line. In recent tariff proceedings the Bureau consis-

[35] The petitions also raise questions regarding Cincinnati's forecasts of growth in individual expense and investment categories (MCI Petition at 24-30) and in HiCap demand (Ad Hoc Petition at 21). Cincinnati appears to address these specific objections adequately in its reply. In addition, these are the same type of issues addressed by the more comprehensive Bureau review of LEC forecasts.

[36] According to AT&T, these other components are Central Office Expense, Network Operations Expense, Network Support Expense, General Support Facilities (GSF) Investment, Corporate Operations Expense, and Depreciation Expense Associated with GSF Investment.

tently has employed 5 percent as a reasonable allocation of OB&C costs to the Common Line rate element.[37] This allocation is intended to reflect costs associated with billing Subscriber Line Charges. In requiring the 1990 disallowances, the Bureau stated that "the burden is on the carriers adequately to support projections that are above the industry standard."[38]

112. We find that Centel has failed adequately to support its deviation from the established 5 percent standard. Initially, we note several inconsistencies in the data reported by Centel in its tariff filing under its proposed "total services methodology. "For example, Centel's assignments to Common Line for each of its Tier 1 companies range from 14.6 percent to 15.3 percent of total OB&C expense, even though the Subscriber Line Charge derived under its basic study for its two accounting centers are 13.2 percent and 12.7 percent, respectively. Centel's assignments to Common Line, therefore, are higher than their studies would indicate. Moreover, we note that Central of Virginia and Central of Illinois assigned more expense to Common Line for billing the Subscriber Line Charge under the "total services methodology" than the total amount assigned to interstate operations for OB&C expense pursuant to the Part 36 separations rules. These anomalous results undermine the validity of Centel's proposed methodology.

113. Further, Centel's "total service methodology" essentially is a modified user count methodology, whereby carriers develop a ratio of Subscriber Line Charge users to users of certain services including Subscriber Line Charges. As noted above, the Bureau found unjustified NECA's application of user counts as a basis for an allocation of OB&C expenses to Common Line.[39] While Centel's "total services methodology" may include more services in its denominator than other user count methodologies, we believe it still allocates excessive OB&C costs to Common Line. We also believe that AT&T presents a reasonable method of calculating a correction of the excess OB&C costs assigned to the Common Line element, including the adjustment for the "Big 3" expense factor.[40] We therefore require Centel to reduce its interstate Common Line revenue requirements by the following amounts in four study areas:[41]

Study Area	Amount (000)
Central of Florida	$239
Central of Illinois	115
Central of Nevada	277
Central of Virginia	251

b. Cost and Demand Forecasts

114. AT&T challenges several of Centel's projections. AT&T Petition at 19, 23. MCI contends that Centel has overforecasted a number of expense and investment accounts in various jurisdictions and erroneously forecast a decline in Texas access lines associated with the Army base at Fort Hood. MCI Petition at 31-38. Centel denies that these accounts are overstated, contending for example that vigorous growth in Las Vegas will require the forecasted investment in new plant and that its demand projections reasonably reflect economic and other factors. Centel Reply at 4-9, 20-26.

115. The projection issues overlap with and are adequately addressed by the Bureau's more comprehensive review of LEC projections. In view of the uncertainty of any forecasts of the level of military need for access lines in the wake of the war in the Persian Gulf and potential reductions in forces and bases, we also do not find any persuasive reason to modify or investigate Centel's projections of Texas access lines.

c. Other State and Local Taxes

116. AT&T asserts that Centel of Florida appears to have overstated other state and local taxes in its interstate revenue requirement. Unless proper justification is given for this increase, AT&T believes that Centel of Florida's interstate revenue requirement should be reduced by $778, 000. AT&T Petition at App. H. AT&T presents the following data to support its position:

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[37] *See, e.g., 1990 Access Tariff Order*, 5 FCC Rcd 4177, 4216; National Exchange Carrier Association, Tr. No. 425, 6 FCC Rcd 719, 720 (Com. Car. Bur. 1991).

[38] *1990 Access Tariff Order*, 5 FCC Rcd at 4216

[39] 6 FCC Rcd at 720. We note that NECA has filed a petition for declaratory ruling asking the Commission to declare that a user count methodology is an acceptable procedure to identify OB&C costs associated with billing Subscriber Line Charges, and that carriers may allocate more than 5 percent of OB&C costs to the Common Line element. *See* Public Notice, AAD 91-3, 6 FCC Rcd 1596 (1991). Pending the outcome of that proceeding, the Bureau will continue to adhere to the position that user counts allocate an unreasonably high percentage of OB&C costs to Subscriber Line Charge billing, and that carriers bear the burden of justifying OB&C expense allocations to Common Line in excess of the established 5 percent standard.

[40] *See* AT&T Petition, App. G, Exhibits A & B.

[41] *See* Appendix H, OB&C Worksheet. In the 1989 and 1990 access tariff proceedings the Bureau ordered rate adjustments for carriers that exceeded the 5 percent standard by more than $100,000. As noted above, Centel is the only rate of return carrier that exceeded the 5 percent standard in this year's tariff filings. Given the carriers' experience with the Bureau's standard over two years we no longer find it appropriate to allow carriers a $100,000 buffer before requiring adjustments

	Subj to Sep (000,s)	I/S (000,s)
ARMIS 4301 1990 Cos IP 1991 TRP	$ 6,059	$ 1,240
	10,138	2,018
Increase in Other ST & Loc Txs	$ 4,079	$ 778

117. Centel states that gross receipts and commission support fee and franchise taxes were inadvertently included in "Other Taxes" in the April 2 filing. Centel states that adjusting for this error removes approximately $2.6 million of tax expense from the applicable account with an interstate adjustment of approximately $687,173. Centel Reply at 15-16. We direct Centel to remove the $687,173 from its tariff year 1991-92 interstate revenue requirement by reducing its Common Line, Traffic Sensitive-Switched, Traffic Sensitive-Special, and Other Interstate rate elements by $348,191; $275,900; $62,870; $206.

3. NECA

a. Forecasts of CCL and TS Minutes

118. MCI disputes NECA's CCL and TS minutes of use forecasts that NECA uses to calculate prospective year CCL and TS rates. MCI also questions NECA's method for calculatinga national average CCL to determine the amount carriers must pay in long term support. MCI Petition at 38. According to MCI, any understatement in MOU predictions will shrink the expected revenue stream from the weighted CCL rate and increase the amount to be recovered from Long Term Support. *Id.* at 38-39. MCI also claims that understated MOU forecasts will lead to artificially inflated TS rates.

119. MCI contends that NECA misled ratepayers and the Commission by asserting that the use of historical, rather than prospective, demand would lead to a lower national average CCL rate. *Id.* at 39. Instead, argues MCI, NECA filed an increase. *Id.* MCI claims that NECA failed to provide any explanation or support for this discrepancy. Therefore, MCI suggests that the Commission should reevaluate the use of historical demand and should direct NECA to explain the discrepancy between its November 1, 1990 calculations and its May 2, 1991 results. *Id.* at 40. MCI also disputes NECA's reduction in growth of CCL MOU. According to MCI, NECA projects a 6.9 percent growth rate for the test year, which is down 40 percent from the 1990 growth rate of 11.4 percent. MCI suggests the Commission require NECA to adjust its forecast to reflect the 8.7 percent growth rate that NECA forecasts for nationwide CCL and to revise its CCL and TS rates and LTS payments accordingly. *Id.* at 42.

120. In reply to MCI's argument concerning the national average CCL rate, NECA notes that the Commission found that the reduction in forecasting expense outweighed the concerns raised by MCI. NECA Reply at 17-18, *citing LEC Price Cap Reconsideration Order*, para. 164. NECA also denies that it promised that its new methodology would result in lower rates, claiming only that the new methodology would not produce materially different rates.

121. We have reviewed NECA's projections of pool usage and find no reason to judge them unreasonable. NECA's calculation of the average CCL rate also appears to be consistent with the revised methodology in the *LEC Price Cap Reconsideration Order*. Accordingly, we deny MCI's petition on these issues.

b. Revenue Requirements

122. AT&T contends that NECA overstated its test period revenue requirements of Common Line and Traffic Sensitive pools. AT&T claims that NECA ignores the 1992 forecasted data submitted by pool participants and gives little weight to the 1991 data from pool participants. Instead, asserts AT&T, NECA made its own estimate of revenue requirements. AT&T notes that NECA tries to justify this change in procedures by claiming that pool participants incorrectly forecasted in the past and reliance upon such forecasts produced earnings erosion -- a decrease in achieved earnings. AT&T Petition at 28; *see* MCI Petition at 42-43. AT&T argues that NECA fails to justify the reasonableness of the amount of adjustment caused by substitution of NECA's new methodology. AT&T Petition at 28; *see* MCI Petition at 43. AT&T further contends that even if NECA needed to adopt a substitute of its members' forecasts, NECA used an unsubstantiated method to derive its 1992 revenue requirement forecasts. AT&T claims that NECA failed to meet its burden of justifying the reasonableness of its rates based on these revenue requirement projections. AT&T Petition at 30-31.

123. MCI believes that NECA employed a flawed forecasting methodology. MCI claims that revenue requirement cannot be directly comparable from year to year because of the separations impacts of the SPF and DEM transitions and inside wire amortization. MCI contends that NECA must provide data so the Commission and ratepayers can evaluate whether NECA accounted for these factors in its calculations. MCI Petition at 44. MCI also expresses concern because NECA's calculations put disproportionate weight on high historical growth rates which will not occur in the test period because growth rates are slowing for common line and traffic sensitive access pools. *Id.* at 45. Finally, MCI asserts that if NECA has manipulated projected data to recover for previous underearnings, it is guilty of retroactive ratemaking. *Id.* at 46.

124. According to NECA, its members require more time than larger telephone companies to finalize their earnings data. NECA claims the difference between its members' preliminary and final data causes "erosion" in its earnings. NECA Reply at 13. NECA denies that rates designed to account for this "erosion" constitute retroactive ratemaking. *Id.* at 10. NECA contends that the Bureau has recognized NECA's erosion problem in the past, and allowed it to increase its rates. *Id.* at 10-11. NECA maintains that its Form 492 for the 1989-90 monitoring period illustrates this erosion. *Id.* at 12-13.

125. NECA also maintains that AT&T's and MCI's attacks on its forecasting methodology are without merit. NECA claims it routinely bases forecasts on incomplete data, since many of its members do not have the expertise or resources necessary to provide complete data. *Id.* at 15. NECA also claims that it must place less weight on 1991 growth data because of "erosion." NECA asserts that it provided data on changes to SPF and DEM factors, and inside wire amortizations, in its April 2 filing. *Id.* at 16.

126. We have examined the forecast growth rates in revenue requirement and demand for the NECA pools. These growth rates do not appear to be outside a range of reasonableness. We therefore do not require NECA to make any adjustments to its pool rates.

127. We note, however, that NECA has based several mid-course filings, in part, on its claim of earnings erosion. This alleged erosion is caused by revised cost studies from the companies in the pool which revise costs upward from the costs reflected in the filing in which the rates were set. In this filing, NECA has described several steps it is taking to reduce erosion. Among these are development of forecast data with individual cost companies in the pools, monitoring of pool settlements, and an expanded program of cost study validation by NECA to all companies in the pools. *See* NECA D&J at 35-39.

128. We believe that these steps should lead to reduced erosion of earnings for the NECA pools. We direct NECA to continue to report to us the steps it is taking to further reduce erosion. In its annual access tariff filing next year, and in any tariff filing which claims earnings erosion as the cause for the change, NECA shall report to us the steps it has taken to reduce erosion and the results of its efforts.

4. Lincoln

129. We find that Lincoln has failed to justify its allocation of Corporate Operations Expense to the interstate jurisdiction. This account is essentially an overhead cost that is predominantly common and joint with respect to state and interstate services. It is thereforedifficult for carriers to directly assign a portion of this expense to the state or interstate jurisdiction. Section 36.392(c) of the Commission's Rules therefore specifies that this expense is to be separated based on an allocation factor rather than a determination of cost causation. Lincoln nonetheless has directly assigned $65,000 of this expense to the interstate jurisdiction. It describes this amount as the "legal expenses associated with filing interstate access tariffs and comments with the FCC."[42] In response to the Bureau's data request of April 11, 1991, Lincoln states that this is the "expense of our Washington attorneys since they are used exclusively for interstate matters."

130. This assignment is not consistent with the applicable rules. We believe the expense should be allocated based on the prescribed interstate expense factor, which Lincoln reports to be 24 percent. We therefore find that the interstate assignment for Corporate Operations Expense should be reduced by $49,400, *i.e.*, by (1.00-.24)($65,000).

VII. NECA USF AND LA RATES

131. The Universal Service Fund (USF) and Lifeline Assistance (LA) rates fund programs were established by the Commission to support affordable telephone service among high cost LECs and low income subscribers. NECA files the USF rate based upon the average historical local loop costs of individual LECs and the LA rate based upon the costs of LA programs; the rates are assessed upon IXCs.[43] In its Transmittal No. 452, filed May 17, 1991 to be effective for the six-month period from July 1, 1991 through December 31, 1991, NECA seeks to increase the USF rates from $0.3090 to $0.3185 per presubscribed line per month and to reduce the LA rate from $0.0593 to $0.0534. On an annualized basis, USF rates would increase by $14.7 million, while LA would be reduced by $9.1 million, a $5.6 million net increase.

132. MCI requests that the USF rate increase be rejected or suspended and investigated, noting that 83 percent of the increase, or $5 million, is to recover amounts NECA believes it would have recovered in January 1991 but for the Bureau's one-month deferral of a portion of a USF increase originally filed by NECA to take effect on January 1, 1991."[44] The Bureau subsequently allowed the USF increase to take effect on February 1, 1991, while stating that it would direct NECA to provide additional information on USF costs, "notably of LECs who report unusual increases in loop costs or in the allocation of costs used to compute USF payments."[45] MCI contends that the Bureau's Order did not permit retroactive recovery of the alleged January 1991 shortfall and urges that NECA should not be permitted to increase rates to recover any disputed amounts. It also contends that the LECs' reports of their loop costs to NECA contain numerous examples of extreme growth and that NECA's attempts to review this data lack sufficient discipline and rigor. MCI USF Petition, *passim*.

133. The Commission's Rules for the calculation of USF costs and rates specifically provide for resizing of USF costs and rates to reflect changes in the size of the Fund in the prior year.[46] These adjustments may either increase or reduce rates in the next year, and NECA has included these adjustments in its USF and LA rates in prior filings. Resizing to reflect current reported costs, including the January shortfall, appears to be consistent with the language and purpose of those rules. If our ongoing examination of USF indicates that some portion of the claimed costs are unwarranted, that provision of the Rules will also provide a mechanism for recoupment of those amounts. On the present record, MCI presents no convincing basis for rejection or suspension of the proposed rate.

VIII. SUMMARY OF RATE ADJUSTMENTS

134. The amounts of the rate adjustments and their allocation to individual LECs and rate elements are calculated in the Appendices to this Order and summarized in Appendix K with the exception of a few minor corrections detailed in Section V. G. *supra*. For price cap LECs, the adjustments to the price cap indexes total $51.7 million; when added to adjustments the LECs have conceded are necessary and have already filed, the total reduction of the rates as filed is expected to be $55 million. Almost half of this amount is attributable to Bell Atlantic -- $27.1

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[42] Lincoln Reply Comments at 3.

[43] Sections 69.603(c) and (d) of the Commission's Rules, 47 C.F.R. §§ 69.603(c), (d).

[44] Local Exchange Carriers' January 1, 1991 Access Tariff Revisions, 6 FCC Rcd 92, 100 (1990) (Com. Car. Bur.).

[45] National Exchange Carrier Association, Tr. No. 427, 6 FCC Rcd 743, 744 (1991) (Com.Car.Bur.).

[46] *See* Section 36.631(e) of the Commission's Rules, 47 C.F.R. § 36.631(e).

million. Other price cap LECs subject to substantial reductions are BellSouth, $8.6 million; Pacific, $6.3 million; Southwestern, $6.0 million; and NYNEX, $2.3 million.

135. The adjustments for rate of return LECs total $3.8 million. Of this amount, $1.8 million is for Cincinnati, $1.6 million for four Centel companies, and $430,000 for Lincoln.

IX. IMPLEMENTATION OF PCI AND RATE ADJUSTMENTS

136. As the detailed discussion of these issues indicates, we have concluded that in some instances price cap LECs have improperly calculated their PCIs and other price cap rate limits, or have not adequately justified those calculations. Rate of return LECs have in some cases committed apparent errors in their rate calculations, or have not adequately justified apparently anomalous and excessive projections of costs. If uncorrected, these filings would apparently establish excessively high access rates, despite the fact that the filings overall represent rate reductions. These excessive rates would be passed on to telephone subscribers in the form of unnecessarily high long distance or private line rates.

137.The Communications Act establishes alternative mechanisms to address these circumstances in Section 204(a) and Section 204(b), 47 U.S.C. §§ 204(a), 204(b). For these filings, Section 204(b) provides the more appropriate remedy, as has been the case for prior annual access filings. Under Section 204(b) the Commission may, *inter alia*, allow part of a charge to go into effect based upon a written showing by the carrier and an opportunity for written comment thereon that such partial authorization is just, fair, and reasonable. The tariff filing and review process has, procedurally, provided LECs and the public with the opportunity to submit these written comments and showings. Substantively, we believe it is preferable to calculate adjustments to correct apparent errors or failures of justification and allow the remainder of the rates to take effect without further delay, and that this action will be just, fair, and reasonable to LECs, access customers, and the public.

138. For price cap LECs, the adjustments are applied to correct the calculated PCIs. In most cases, where APIs are set close to or at the level of the PCI, the effect would be APIs that exceed the PCIs unless rates are adjusted downward. None of the price cap LECs has filed the additional support information and justification that would be required to justify above-cap rates. Of course, none of the LECs intended its rates to move above the cap. Refiling of PCIs to implement the necessary PCI adjustments, and refiling of APIs and rates that conform to the price cap limits, will maintain LEC compliance with the price cap rules.

139. For rate of return LECs, as in prior years, we have computed adjustments directly to the proposed rates in the form of rate adjustment factors (RAFs). These RAFs are listed in Appendix J and are to be applied uniformly to correct recurring access rate elements, excluding Individual Case Basis rates and the Special Access surcharge. Alternatively, these companies may recalculate their filed rates so long as the recalculated rates result in cost adjustments at least equal to those calculated by use of RAFs and are accompanied by a clear, reasonable explanation of how each adjustment was calculated.

140. NECA is directed to recalculate its CCL rates and individual LEC obligations for long-term support payments in accordance with the adjustments in this Order. Individual LECs are similarlydirected to reflect these changes, as appropriate, in their CCL rates.

141. As in prior years, we wish to emphasize the limited nature and effect of our actions. Neither the adjustments to PCIs nor the RAFs applied to rate of return LECs constitutes a rate prescription pursuant to Section 205(a) of the Communications Act, 47 U.S.C. § 205(a). They represent, rather partial authorizations of rates to the extent necessary to correct apparently erroneous aspects of the price cap index calculations or rate development processes, as set out in the LEC tariff filings and subsequent material of record. The LECs are free to file revisions to the resultant price cap indexes or rates at any time. Of course, such filings must be accompanied by relevant support information and we would expect a LEC that files rate increases to address fully the considerations which led us to conclude that the rates should be subject to partial authorization under Section 204(b).

142. In a number of cases, LECs have identified errors in their PCIs or rate development processes. We have discussed a number of these cases in this Order. These revisions require the grant of special permissions to allow their prompt implementation, which we anticipate will be freely granted. Each LEC is directed to consolidate all required and allowed changes scheduled to become effective on July 1, 1991 into a single filing in accordance with the schedule and requirements specified in this Order.

ORDERING CLAUSES

143. Accordingly, IT IS ORDERED, pursuant to Section 204(b) of the Communications Act, 47 U.S.C. § 204(b), that the rates for any carrier listed on Appendix J, ARE ALLOWED IN PART, as reduced by the Rate Adjustment Factors listed in that Appendix. Those carriers ARE ORDERED to issue supplements in compliance with this Order, reflecting reductions and employing the Rate Adjustment Factors, where warranted, no later than June 27, 1991, with a scheduled effective date of July 1, 1991. Subsequent to such scheduled effective date, carriers may file revised rates directly reflecting these partial authorizations and replacing rates based on Rate Adjustment Factors, to be effective on statutory notice.

144. IT IS FURTHER ORDERED that tariff revisions in compliance with this Order SHALL BE FILED on June 27, 1991, with a scheduled effective date of July 1, 1991.

145. IT IS FURTHER ORDERED that the Bell Atlantic Telephone Companies and the BellSouth Telephone Companies, as specified in Section V. A. 1, *supra*, and in Appendix E, ARE DIRECTED to reflect the changes in their price cap adjustment filings to account for inside wire adjustments.

146. IT IS FURTHER ORDERED that the Ameritech Operating Companies, as specified in Section V. A. 2, *supra*, and in Appendix E ARE DIRECTED to reflect the reduction in their exogenous change for Long Term Support and Transitional Support obligations.

147. IT IS FURTHER ORDERED that the BellSouth Telephone Companies and Pacific Bell, as specified in Section V. A. 4, *supra*, and in Appendix E, ARE DIRECTED to reflect the reduction in excess deferred tax flowback.

148. IT IS FURTHER ORDERED that the Bell Atlantic Telephone Companies, the BellSouth Telephone Companies, the NYNEX Telephone Companies (New York Telephone Company), Pacific Bell, the Southern New England Telephone Company, and Southwestern Bell Telephone Company, as specified in Section V. A. 6, *supra*, and in Appendix E, ARE DIRECTED to reflect the additional exogenous change reductions associated with revisions in reserve deficiency amortization calculations in their price cap adjustment filings.

149. IT IS FURTHER ORDERED that Contel Corporation (Virginia), as specified in Section V. A. 6, *supra*, and in Appendix E, IS DIRECTED to reflect the additional exogenous change amounts associated with revisions in reserve deficiency amortization calculations in its price cap adjustment filing.

150. IT IS FURTHER ORDERED that all local exchange carriers filingprice cap tariffs ARE DIRECTED to file documents identifying specifically the new services introduced in the base year of 1990 as specified in Section V. B, *supra*. This list shall include the tariff transmittal number, the effective date of the revisions, the base year demand quantities and proposed rates, and the specific basket or subindex to which each service was assigned in theAnnual 1991 Access Filing. This list shall be filed on June 27, 1991, together with any other filing required by this Order.

151. IT IS FURTHER ORDERED that Southwestern Bell Telephone Company, as specified in Section V. G, *supra*, and in Appendix E, IS DIRECTED to reflect the recomputation of Local Switching and Traffic Sensitive indexes.

152. IT IS FURTHER ORDERED that all local exchange carriers filing price cap tariffs, as specified in Section V.G, *supra*, and in Appendix E, ARE DIRECTED to reflect the exclusion of Special Access Surcharge lines from the calculation of the "g" factor.

153. IT IS FURTHER ORDERED that US West Communications, as specified in Section V. G, *supra*, and in Appendix E, IS DIRECTED to recompute its indexes and SHALL REVISE Special Access rates accordingly.

154. IT IS FURTHER ORDERED that the Centel Telephone Companies (Florida, Illinois, Nevada, and Virginia), as specified in Section VI. B. 2, *supra*, and in Appendix J, SHALL REVISE rates reflecting the reductions in interstate Common Line revenue requirements.

155. IT IS FURTHER ORDERED that the Centel Telephone Companies, as specified in Section VI. B. 2, *supra*, and in Appendix J, SHALL REVISE rates reflecting the reductions in Other Taxes.

156. IT IS FURTHER ORDERED that the National Exchange Carrier Association, as specified in Section VI. B. 3, *supra*, SHALL REPORT the steps it has taken to reduce earnings "erosion" and the results of those efforts in accordance with the requirements of that section.

157. IT IS FURTHER ORDERED that the Lincoln Telephone and Telegraph Company, as specified in Section VI. B. 4, *supra*, SHALL REVISE rates to reflect the reduction for Corporate Operations Expense.

158. IT IS FURTHER ORDERED that the National Exchange Carrier Association SHALL REVISE Carrier Common Line rates and individual local exchange carrier obligations for long-term support payments in accordance with the adjustments in this Order.

159. IT IS FURTHER ORDERED that all local exchange carriers SHALL REVISE Carrier Common Line rates in accordance with adjustments in this Order.

160. IT IS FURTHER ORDERED that the Ameritech Operating Companies, Application No. 132; the Bell Atlantic Telephone Companies, Application No. 131; Granite State Telephone Company, Inc., Application No. 3; Nevada Bell, Application Nos. 52 and 52 amended; New York Telephone Company, Application No. 156; the NYNEX Telephone Companies, Application No. 14; Southwestern Bell Telephone Company, Application No. 267; the United Telephone System Companies, Application No. 73; and US West Communications, Application No. 61 ARE GRANTED. Tariff revisions reflecting grant of these applications should be filed on June 27, 1991, to become effective July 1, 1991.

161. IT IS FURTHER ORDERED that Sections 61.56, 61.58, and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, 61.59, ARE WAIVED for the purpose of compliance with this Order and Special Permission No. 91-507 IS ASSIGNED.

162. IT IS FURTHER ORDERED that, to the extent a local exchange carrier has previously reduced rates or adjusted its calculations, in a manner that duplicates directions in this Order, the local exchange carrier need not make further reductions or other adjustments. Any local exchange carrier covered by the provisions of this paragraph SHALL FILE notice to that effect with the Secretary of the Commission on June 27, 1991.

163. IT IS FURTHER ORDERED that all local exchange carriers filing adjustments, pursuant to this Order, to their price cap filings that do not result in rate changes, ARE DIRECTED to file the revised calculationson June 27, 1991. Any local exchange carrier covered by the provisions of this paragraph SHALL FILE notice to that effect with the Secretary of the Commission on June 27, 1991.

164. IT IS FURTHER ORDERED that because no carrier has made an above-cap or above-band showing, carriers that are required to adjust indexes shall adjust rates to bring those rates into compliance with the price cap rules. Such filings shall be made on June 27, 1991, with a scheduled effective date of July 1, 1991.

165. IT IS FURTHER ORDERED that the petitions to suspend and investigate or to reject the Annual 1991 Access Tariff Filings ARE GRANTED to the extent indicated herein and otherwise ARE DENIED.

166. IT IS FURTHER ORDERED that the petition to suspend and investigate or to reject the National Exchange Carrier Association Transmittal No. 452 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

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APPENDIX A

PLEADINGS
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APPENDIX A

Petitions

The following parties filed petitions against the Annual 1991Access Tarifff Filings. The names in parentheses are used for these partiesthroughout the Order.

Ad Hoc Telecommunications Users Committee (Ad Hoc)

American Telephone and Telegraph Company (AT&T)

Competitive Telecommunications Association (CompTel)

MCI Telecommunications Corporation (MCI)

Metropolitan Fiber Systems, Inc. (MFS)

Public Service Commission of the District of Columbia (DC PSC)

US Sprint Communications Company Limited Partnership (Sprint)

Replies

The following parties filed replies to the petitions:

The Ameritech Operating Companies (Ameritech)

The Bell Atlantic Telephone Companies (Bell Atlantic)

The BellSouth Telephone Companies (BellSouth)

Centel Telephone Companies (Centel)

Cincinnati Bell Telephone Company (Cincinnati)

The GTE Telephone Operating Companies (GTOC) and Contel Telephone Operating Companies (Contel)

Lincoln Telephone and Telegraph Company (Lincoln)

The National Exchange Carrier Association, Inc. (NECA)

Nevada Bell (Nevada)

New England Telephone and Telegraph Company (New England) and New York Telephone Company (New York) (NYNEX)

Pacific Bell (Pacific)

Rochester Telephone Corporation (Rochester)

The Southern New England Telephone Company (SNET)

Southwestern Bell Telephone Company (Southwestern)

United Telephone System Companies (United)

U S West Communications, Inc. (US West)

Comments on ARMIS Data

The following parties filed comments on Automated Reporting Management Information System (ARMIS) Reports filed by local exchangecarriers:

AT&T

MCI

Replies

The following parties filed replies to the comments:

Ameritech

Bell Atlantic

BellSouth

GTOC and Contel

Nevada

Pacific

Southwestern

United

US West

APPENDIX B

INSIDE WIRE RELATED ADJUSTMENTS
Inside Wire Worksheet 1
Inside Wire Worksheet 2

INSIDE WIRE WORKSHEET 1 (IW1)
IW EXOGENOUS CHANGE ANALYSIS
BELL ATLANTIC

Holding Company	Operating Company	State	Projected 1989	Projected 1990	Projected 1991	Projected 1992	Projected 1993	Est TRP'90-91 IW Amort Exp (C/2 + D/2)	Est TRP'91-92 IW Amort Exp (D/2 + E/2)	Expected Change (G - H)	TRP Filed Change (EXG-1)	TRP Filed Amt Under PCC Estimate
	A		B	C	D	E	F	G	H	I	J	K
B Atl	C&P Washington	D.C.	0	0	0			0	0	0		
B Atl	C&P of Maryland		0	0	0			0	0	0		
B Atl	C&P of Virginia		0	0	0			0	0	0		
B Atl	C&P of W Virginia		0	0	0			0	0	0		
B Atl	New Jersey Bell		23144	23144	1854	574	0	12499	1214	11285		
B Atl	B of Pennsylvania		17345	17345	1849	911	0	9597	1380	8217		
B Atl	Diamond State Tel		0	0	0			0	0	0		
B Atl	TOTAL		40489	40489	3703	1485	0	22096	2594	19502	0	-19502

INSIDE WIRE WORKSHEET 2 (IW2)
IW EXOGENOUS CHANGE
BELL ATLANTIC ADJUSTMENTS

A	CARRIER TRP FILED IW AMORT EXP CHANGE EXG-1 B	PCC COMPUTED EXPECTED IW AMORT EXP CHANGE IW1,COL K TOT C	DIFFERENCE: FILING UNDER PCC COMPUTED AMOUNT COL C - COL B D	AMORT EXP DIFFERENCE DISTRIBUTION TO SERVICE BASKETS (SEE NOTE) E	ADJUSTMENT TO DEPRECIATION RESERVE IW1, COL G/2 F	RESERVE ADJUSTMENT DISTRIBUTION TO SERVICE BASKETS (SEE NOTE) G	ADJUSTMENT TO ACCUMULATED DEFERRED INCOME TAX COL G x .34 H	NET RATE BASE ADJUSTMENT COL G - COL H I	NET RETURN REDUCTION COL I x .1125 J	ADJUSTMENT FOR P.I.T. COL J(.34/.66) K	TOTAL REVENUE EFFECT OF IW AMORT EXP ADJUSTMENT COLS E + J + K L
BELL ATLANTIC											
TOT	0	19502	19502		11048						
CL				8951		5071	1724	3347	377	194	9522
TE				7176		4066	1382	2684	302	156	7634
SA				3335		1889	642	1247	140	72	3547
IX				40		22	7	15	2	1	43

NOTE: The adjustment for Bell Atlantic's exogenous change for inside wiring amortization was distributed among service baskets on the basis of its distribution of its reserve deficiency amortization change on EXG-1.

APPENDIX C

RESERVE DEFICIENCY AMORTIZATION RELATED ADJUSTMENTS
Reserve Deficiency Amortization Worksheet

RDA WORKSHEET 1
RDA EXOGENOUS CHANGE
RATE BASE EFFECT

A	CARRIER TRP FILED RDA AMORT EXP CHANGE EXG-1 B	CARRIER TRP FILED RDA ASSOCIATED RESERVE CHANGE EXG-1 C	PCC COMPUTED EXPECTED RDA ASSOCIATED RESERVE CHANGE COL B * 2 * .75 D	DIFFERENCE: FILING OVER/UNDER(-) PCC COMPUTED AMOUNT COL C - COL D E	ADJUSTMENT FOR ACCUMULATED DEFERRED INCOME TAX PER TRP FILED F	NET RATE BASE ADJUSTMENT COL E - COL F G	NET RETURN REDUCTION COL G * .1125 H	ADJUSTMENT FOR F.I.T. COL H(.34/.66) I	REVENUE EFFECT OF RATE BASE ADJUSTMENT COL H + COL I J
BELL ATLANTIC									
CL	13044	-6522	19566	-26088	-8870	-17218	-1937	-998	-2935
TS	10455	-5228	15683	-20911	-7110	-13801	-1553	-800	-2352
SA	4861	-2431	7292	-9723	-3306	-6417	-722	-372	-1094
IX	72	-36	108	-144	-49	-95	-11	-6	-16
BELLSOUTH									
CL	19650	10105	29475	-19370	-3826	-15544	-1749	-901	-2650
TS	9129	3939	13694	-9755	-4680	-5074	-571	-294	-865
SA	3455	1474	5183	-3709	-1482	-2227	-250	-129	-380
IX	14	6	21	-15	-12	-3	-0	-0	-0
NEW YORK TEL									
CL	10183	7637	15275	-7638	-2864	-4773	-537	-277	-814
TS	13996	10497	20994	-10497	-3936	-6561	-738	-380	-1118
SA	4831	3623	7247	-3624	-1359	-2265	-255	-131	-386
IX	72	54	108	-54	-20	-34	-4	-2	-6
PACTEL CAL									
CL	10771	0	16157	-16157	-6	-16151	-1817	-936	-2753
TS	5944	0	8916	-8916	3	-8919	-1003	-517	-1520
SA	2523	0	3785	-3785	1	-3786	-426	-219	-645
IX	1	0	2	-2	0	-2	-0	-0	-0
SOUTHWESTERN BELL									
CL	16124	8731	24186	-15455	0	-15455	-1739	-896	-2634
TS	10964	5942	16446	-10504	0	-10504	-1182	-609	-1790
SA	4472	-2423	6708	-9131	0	-9131	-1027	-529	-1556
IX	1	1	2	-1	0	-1	-0	-0	-0
SNET									
CL	1112	0	1668	-1668	0	-1668	-188	-97	-284
TS	1620	0	2430	-2430	0	-2430	-273	-141	-414
SA	301	0	452	-452	0	-452	-51	-26	-77
IX	0	0	0	0	0	0	0	0	0

APPENDIX D

PRICE CAP CARRIER INDEXES
FCC Analyzer

ANALYZER CHARTS

The following Analyzer charts are the output of the Analyzer program that the Commission has applied to the tariff review plan (TRP) data of the price cap LECs. The Analyzer charts verify that the various indexes that the LECs have computed are in accordance with the price cap rules contained in Part 61 of the Commission's Rules. The indexes include PCIs, APIs, SBIs, and SBI upper and lower limits. The carrier common line rates are also computed and verified. In addition, the Analyzer checks whether each API is at or below the relevant PCI and whether each SBI is at or between the relevant upper and lower SBI limits.

For each index, the LEC's calculation (as contained in the TRP) and the FCC calculation are displayed side by side. Discrepancies are noted in the "Delta" column and flagged if significant. An asterisk in the flag column means that there is no significant discrepancy. Flags are also displayed for each API that exceeds its associated PCI (Flag "HIGH"), for each SBI that is not within the associated upper and lower SBI limits (Flags "HIGH" or "LOW," respectively) and for each CCL rate that exceeds the CCL rate cap (Flag "HIGH"). In addition, if an API or CCL rate is below its cap by more than 1 percent, it is flagged as "LOW," even though such a rate does not violate price cap rules. The purpose of this last flag is to identify which rates are below cap.

The Analyzer charts do <u>not</u> reflect corrections or adjustments (such as adjustments to exogenous changes) required by this Order. Since the purpose of the Analyzer is to verify that price cap formulas have been correctly applied by the LECs, the charts represent an analysis performed exclusively on data provided by the LECs in their filings or errata.

AMTR	LEC	FCC	Delta	Flag
GENERAL				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES				
SPF	$14,088			
DEM	($14,584)			
LTS/TRS	($33,351)			
ISW	($2,398)			
RDA	($10,729)			
DTAX	$2,767			
OTHER	$0			
TOTAL OF INDIVIDUALS	($44,207)			
TOTAL EXOGENOUS	($44,208)			
COMMON LINE				
Term Prem CCL Rate	0.00934	0.00934	-0.00000	*
Orig Prem CCL Rate	0.00934	0.00934	-0.00000	*
g	0.06400			
Proposed PCI	95.25	95.25	0.001	*
TRAFFIC SENSITIVE				
Local Switching				
Proposed SBI	98.54	98.54	-0.001	*
SBI: Upper Limit	102.04	102.05	-0.005	*
SBI: Lower Limit	92.32	92.33	-0.007	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	96.22	96.22	-0.005	*
SBI: Upper Limit	102.12	102.13	-0.009	*
SBI: Lower Limit	92.40	92.40	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.53	98.53	0.000	*
SBI: Upper Limit	102.05	102.06	-0.006	*
SBI: Lower Limit	92.33	92.34	-0.006	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	97.23	97.23	-0.002	*
TS PCI	97.23	97.24	-0.006	*
LEC API Above PCI?				*
FCC API Above PCI?				*

AMTR	LEC	FCC	Delta	Flag
SPECIAL				
VG, MT, TG				
Proposed SBI	98.42	98.42	0.000	*
SBI: Upper Limit	104.87	104.87	0.003	*
SBI: Lower Limit	94.88	94.88	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	98.41	98.41	0.000	*
SBI: Upper Limit	104.86	104.86	0.004	*
SBI: Lower Limit	94.87	94.87	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	93.44	93.44	0.000	*
Sub-Index Up Lim	99.56	99.56	-0.001	*
Sub-Index Low Lim	90.08	90.08	0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	94.92	94.92	0.000	*
Sub-Index Up Lim	101.14	101.14	0.002	*
Sub-Index Low Lim	91.51	91.51	0.004	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	94.27	94.27	0.000	*
SBI: Upper Limit	100.45	100.45	0.005	*
SBI: Lower Limit	90.88	90.88	0.001	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	96.53	96.53	0.000	*
Special PCI	99.77	99.77	-0.002	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW
INTEREXCH				
Interexchange API	95.88	95.88	0.000	*
Interexchange PCI	99.98	99.97	0.010	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW

BATR	LEC	FCC	Delta	Flag
GENERAL				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES				
SPF	($5,308)			
DEM	($14,686)			
LTS/TRS	($33,102)			
ISW	$0			
RDA	($26,833)			
DTAX	$1,867			
OTHER	$0			
TOTAL OF INDIVIDUALS	($78,062)			
TOTAL EXOGENOUS	($78,062)			
COMMON LINE				
Term Prem CCL Rate	0.01003	0.01003	0.00000	*
Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
g	0.06610			
Proposed PCI	93.44	93.44	0.000	*
TRAFFIC SENSITIVE				
Local Switching				
Proposed SBI	102.19	102.19	-0.001	*
SBI: Upper Limit	102.20	102.19	0.007	*
SBI: Lower Limit	92.46	92.46	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	93.87	93.87	0.000	*
SBI: Upper Limit	102.20	102.19	0.007	*
SBI: Lower Limit	92.46	92.46	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.06	98.06	-0.005	*
SBI: Upper Limit	102.17	102.16	0.008	*
SBI: Lower Limit	92.44	92.43	0.008	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	97.33	97.33	0.001	*
TS PCI	97.33	97.33	0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*

BATR	LEC	FCC	Delta	Flag
SPECIAL				
VG, MT, TG				
Proposed SBI	102.31	102.31	0.003	*
SBI: Upper Limit	105.42	105.41	0.007	*
SBI: Lower Limit	95.38	95.37	0.006	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	101.52	101.52	-0.005	*
SBI: Upper Limit	105.42	105.41	0.007	*
SBI: Lower Limit	95.38	95.37	0.006	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	93.37	93.37	0.003	*
Sub-Index Up Lim	100.15	100.14	0.007	*
Sub-Index Low Lim	90.61	90.61	0.005	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	89.08	89.08	0.003	*
Sub-Index Up Lim	97.75	97.75	0.000	*
Sub-Index Low Lim	88.44	88.44	-0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	94.64	94.64	-0.004	*
SBI: Upper Limit	100.99	100.99	0.004	*
SBI: Lower Limit	91.37	91.37	0.002	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	102.43	102.43	-0.004	*
SBI: Upper Limit	105.42	105.41	0.007	*
SBI: Lower Limit	95.38	95.37	0.006	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	98.53	98.53	0.002	*
Special PCI	98.53	98.53	0.004	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH				
Interexchange API	100.95	100.95	0.002	*
Interexchange PCI	100.95	100.95	0.001	*
LEC API Above PCI?				*
FCC API Above PCI?				*

BSTR	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04802			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES----------				
SPF	($14,424)			
DEM	($30,180)			
LTS/TRS	$29,550			
ISW	($22,542)			
RDA	($34,286)			
DTAX	$14,508			
OTHER	$0			
TOTAL OF INDIVIDUALS	($57,374)			
TOTAL EXOGENOUS	($57,374)			
COMMON LINE----------				
Term Prem CCL Rate	0.01309	0.01309	-0.00000	*
Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
g	0.06662			
Proposed PCI	95.07	95.07	-0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	102.02	102.02	-0.001	*
SBI: Upper Limit	102.17	102.17	0.002	*
SBI: Lower Limit	92.44	92.44	0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	92.87	92.87	-0.000	*
SBI: Upper Limit	102.06	102.06	0.001	*
SBI: Lower Limit	92.34	92.34	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	104.03	104.03	0.001	*
SBI: Upper Limit	104.03	104.03	-0.000	*
SBI: Lower Limit	94.12	94.12	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	97.36	97.36	0.001	*
TS PCI	97.36	97.36	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

BSTR	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	106.31	106.31	0.002	*
SBI: Upper Limit	106.34	106.34	0.004	*
SBI: Lower Limit	96.21	96.21	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	106.37	106.36	0.010	*
SBI: Upper Limit	106.37	106.37	-0.003	*
SBI: Lower Limit	96.24	96.24	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	97.48	97.48	-0.001	*
Sub-Index Up Lim	106.35	106.35	0.002	*
Sub-Index Low Lim	96.22	96.22	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	98.76	98.76	0.000	*
Sub-Index Up Lim	106.27	106.27	-0.003	*
Sub-Index Low Lim	96.15	96.15	-0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	96.68	96.68	-0.004	*
SBI: Upper Limit	106.34	106.34	0.003	*
SBI: Lower Limit	96.21	96.21	0.001	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	100.92	100.92	0.002	*
Special PCI	101.28	101.28	0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	99.41	99.41	0.005	*
Interexchange PCI	99.42	99.42	0.002	*
LEC API Above PCI?				*
FCC API Above PCI?				*

COCC	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	($4,090)			
DEM	$264			
LTS/TRS	$13,385			
ISW	($1,549)			
RDA	($613)			
DTAX	$0			
OTHER	$255			
TOTAL OF INDIVIDUALS	$7,652			
TOTAL EXOGENOUS	$7,678			
COMMON LINE----------				
Term Prem CCL Rate	0.02986	0.03245	-0.00259	LOW
Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
g	0.09612			
Proposed PCI	97.72	97.72	0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	0.00	NONE	0.000	*
TS PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

COCC	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	0.00	NONE	0.000	*
Sub-Index Up Lim	0.00	NONE	0.000	*
Sub-Index Low Lim	0.00	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	0.00	NONE	0.000	*
Special PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

COCR	LEC	FCC	Delta	Flag
GENERAL				
GNPPI	0.00000			
X for CL, TS and SP	0.00000			
X for IX	0.0000			
EXOGENOUS CHANGES				
SPF	($61)			
DEM	($1,831)			
LTS/TRS	$0			
ISW	($15)			
RDA	$0			
DTAX	$0			
OTHER	$0			
TOTAL OF INDIVIDUALS	($1,907)			
TOTAL EXOGENOUS	($1,908)			
COMMON LINE				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.00000			
Proposed PCI	0.00	NONE	0.000	*
TRAFFIC SENSITIVE				
Local Switching				
Proposed SBI	95.96	95.96	-0.003	*
SBI: Upper Limit	100.52	100.51	0.006	*
SBI: Lower Limit	90.94	90.94	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	94.89	94.88	0.006	*
SBI: Upper Limit	99.88	99.88	0.000	*
SBI: Lower Limit	90.37	90.37	0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	95.96	95.96	0.000	*
SBI: Upper Limit	101.69	101.69	0.001	*
SBI: Lower Limit	92.00	92.00	-0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	95.57	95.57	0.004	*
TS PCI	95.58	95.58	-0.001	*
LEC API Above PCI?				*
FCC API Above PCI?				*

COCR	LEC	FCC	Delta	Flag
SPECIAL				
VG, MT, TG				
Proposed SBI	97.86	97.86	0.000	*
SBI: Upper Limit	104.99	104.99	-0.001	*
SBI: Lower Limit	94.99	94.99	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	97.81	97.81	0.000	*
SBI: Upper Limit	104.94	104.94	0.003	*
SBI: Lower Limit	94.94	94.94	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	98.13	98.13	0.000	*
Sub-Index Up Lim	105.28	105.28	-0.001	*
Sub-Index Low Lim	95.25	95.25	-0.004	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	98.14	98.14	0.000	*
SBI: Upper Limit	105.29	105.29	-0.002	*
SBI: Lower Limit	95.26	95.26	-0.004	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	97.92	NONE	97.920	HIGH
SBI: Upper Limit	105.06	NONE	105.060	HIGH
SBI: Lower Limit	95.05	NONE	95.050	HIGH
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	97.92	97.92	0.000	*
Special PCI	100.06	100.06	0.003	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW
INTEREXCH				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

COCT	LEC	FCC	Delta	Flag
GENERAL				
GNPPI	0.00000			
X for CL, TS and SP	0.00000			
X for IX	0.0000			
EXOGENOUS CHANGES				
SPF	($45)			
DEM	($839)			
LTS/TRS	$0			
ISW	($9)			
RDA	($131)			
DTAX	$0			
OTHER	$0			
TOTAL OF INDIVIDUALS	($1,024)			
TOTAL EXOGENOUS	($1,011)			
COMMON LINE				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.00000			
Proposed PCI	0.00	NONE	0.000	*
TRAFFIC SENSITIVE				
Local Switching				
Proposed SBI	94.70	94.70	-0.002	*
SBI: Upper Limit	99.60	99.60	0.002	*
SBI: Lower Limit	90.11	90.11	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	94.72	94.72	0.005	*
SBI: Upper Limit	98.93	98.92	0.008	*
SBI: Lower Limit	89.50	89.50	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	94.85	94.85	-0.002	*
SBI: Upper Limit	102.38	102.38	-0.000	*
SBI: Lower Limit	92.63	92.63	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	94.68	94.68	0.003	*
TS PCI	94.70	94.70	-0.001	*
LEC API Above PCI?				*
FCC API Above PCI?				*

COCT	LEC	FCC	Delta	Flag
SPECIAL				
VG, MT, TG				
Proposed SBI	97.78	97.78	0.000	*
SBI: Upper Limit	103.79	103.79	-0.004	*
SBI: Lower Limit	93.91	93.91	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	97.72	97.72	0.000	*
SBI: Upper Limit	103.73	103.73	-0.001	*
SBI: Lower Limit	93.85	93.85	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	98.12	98.12	0.000	*
Sub-Index Up Lim	104.15	104.16	-0.005	*
Sub-Index Low Lim	94.23	94.24	-0.006	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	98.12	98.12	0.000	*
SBI: Upper Limit	104.16	104.16	0.005	*
SBI: Lower Limit	94.24	94.24	0.004	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	97.89	NONE	97.890	HIGH
SBI: Upper Limit	103.91	NONE	103.910	HIGH
SBI: Lower Limit	94.01	NONE	94.010	HIGH
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	97.88	97.88	-0.000	*
Special PCI	98.98	98.98	-0.003	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW
INTEREXCH				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

COEN	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.00000			
X for CL, TS and SP	0.00000			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	($62)			
DEM	$400			
LTS/TRS	$0			
ISW	($3)			
RDA	$0			
DTAX	$0			
OTHER	$0			
TOTAL OF INDIVIDUALS	$335			
TOTAL EXOGENOUS	$333			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.00000			
Proposed PCI	0.00	NONE	0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	98.04	98.04	0.000	*
SBI: Upper Limit	107.21	107.22	-0.007	*
SBI: Lower Limit	97.00	97.01	-0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	98.04	98.04	0.000	*
SBI: Upper Limit	107.22	107.22	0.003	*
SBI: Lower Limit	97.01	97.01	0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	97.97	97.97	0.000	*
SBI: Upper Limit	107.14	107.14	-0.000	*
SBI: Lower Limit	96.93	96.94	-0.006	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	98.04	98.04	0.000	*
TS PCI	102.11	102.11	-0.001	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW

COEN	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	97.79	97.79	0.000	*
SBI: Upper Limit	103.21	103.21	-0.003	*
SBI: Lower Limit	93.38	93.38	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	97.80	NONE	97.800	HIGH
SBI: Upper Limit	103.22	NONE	103.220	HIGH
SBI: Lower Limit	93.39	NONE	93.390	HIGH
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	98.07	98.07	0.000	*
Sub-Index Up Lim	103.51	103.51	0.001	*
Sub-Index Low Lim	93.65	93.65	-0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	98.07	98.07	0.000	*
SBI: Upper Limit	103.51	103.51	0.001	*
SBI: Lower Limit	93.65	93.65	-0.001	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	97.80	NONE	97.800	HIGH
SBI: Upper Limit	103.22	NONE	103.220	HIGH
SBI: Lower Limit	93.39	NONE	93.390	HIGH
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	97.80	97.80	0.000	*
Special PCI	98.31	98.31	0.002	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

COES	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.00000			
X for CL, TS and SP	0.00000			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	($17)			
DEM	($1,373)			
LTS/TRS	$0			
ISW	($5)			
RDA	$0			
DTAX	$0			
OTHER	$0			
TOTAL OF INDIVIDUALS	($1,395)			
TOTAL EXOGENOUS	($1,395)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.00000			
Proposed PCI	0.00	NONE	0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	96.03	96.03	0.000	*
SBI: Upper Limit	101.03	101.02	0.006	*
SBI: Lower Limit	91.41	91.40	0.007	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	96.03	96.03	-0.004	*
SBI: Upper Limit	100.34	100.34	-0.000	*
SBI: Lower Limit	90.78	90.78	-0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	96.05	96.05	-0.003	*
SBI: Upper Limit	101.26	101.26	0.001	*
SBI: Lower Limit	91.62	91.62	0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	96.02	96.02	0.002	*
TS PCI	96.03	96.03	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

COES	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	98.83	98.83	0.000	*
SBI: Upper Limit	105.94	105.93	0.005	*
SBI: Lower Limit	95.85	95.85	0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	98.85	NONE	98.850	HIGH
SBI: Upper Limit	105.96	NONE	105.960	HIGH
SBI: Lower Limit	95.87	NONE	95.870	HIGH
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	98.90	98.90	0.000	*
Sub-Index Up Lim	106.01	106.01	0.000	*
Sub-Index Low Lim	95.91	95.91	-0.003	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	98.89	98.89	0.000	*
SBI: Upper Limit	106.00	106.00	0.001	*
SBI: Lower Limit	95.91	95.90	0.006	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	98.74	98.74	0.000	*
SBI: Upper Limit	105.84	105.84	0.002	*
SBI: Lower Limit	95.76	95.76	0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	98.85	98.85	0.000	*
Special PCI	100.92	100.91	0.010	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

CONW	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.00000			
X for CL, TS and SP	0.00000			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	($40)			
DEM	($145)			
LTS/TRS	$0			
ISW	$0			
RDA	$0			
DTAX	$0			
OTHER	$0			
TOTAL OF INDIVIDUALS	($185)			
TOTAL EXOGENOUS	($184)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.00000			
Proposed PCI	0.00	NONE	0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	96.90	96.90	-0.005	*
SBI: Upper Limit	101.69	101.69	-0.000	*
SBI: Lower Limit	92.01	92.01	0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	97.06	97.06	-0.002	*
SBI: Upper Limit	102.06	102.06	-0.003	*
SBI: Lower Limit	92.34	92.34	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	96.38	96.38	0.000	*
SBI: Upper Limit	99.93	99.93	0.002	*
SBI: Lower Limit	90.41	90.41	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	96.93	96.93	-0.001	*
TS PCI	96.93	96.93	0.001	*
LEC API Above PCI?				*
FCC API Above PCI?				*

CONW	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	97.90	97.90	-0.000	*
SBI: Upper Limit	104.59	104.59	-0.001	*
SBI: Lower Limit	94.63	94.63	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	97.71	NONE	97.710	HIGH
SBI: Upper Limit	104.59	NONE	104.590	HIGH
SBI: Lower Limit	94.63	NONE	94.630	HIGH
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	98.22	98.22	-0.000	*
Sub-Index Up Lim	104.93	104.93	-0.002	*
Sub-Index Low Lim	94.94	94.94	0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	98.22	98.22	-0.000	*
SBI: Upper Limit	104.93	104.93	-0.002	*
SBI: Lower Limit	94.94	94.94	0.001	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	98.01	NONE	98.010	HIGH
SBI: Upper Limit	104.71	NONE	104.710	HIGH
SBI: Lower Limit	94.74	NONE	94.740	HIGH
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	98.01	98.01	0.000	*
Special PCI	99.73	99.73	-0.002	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

CONY	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.00000			
X for CL, TS and SP	0.00000			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	$6			
DEM	($191)			
LTS/TRS	$0			
ISW	$0			
RDA	($62)			
DTAX	$0			
OTHER	($41)			
TOTAL OF INDIVIDUALS	($288)			
TOTAL EXOGENOUS	($286)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.00000			
Proposed PCI	0.00	NONE	0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	101.55	101.55	0.001	*
SBI: Upper Limit	106.74	106.74	0.003	*
SBI: Lower Limit	96.57	96.57	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	101.53	101.53	-0.004	*
SBI: Upper Limit	106.45	106.46	-0.006	*
SBI: Lower Limit	96.31	96.32	-0.007	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	101.44	101.44	0.004	*
SBI: Upper Limit	107.06	107.06	0.001	*
SBI: Lower Limit	96.86	96.86	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	101.53	101.52	0.007	*
TS PCI	101.55	101.56	-0.005	*
LEC API Above PCI?				*
FCC API Above PCI?				*

CONY	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	102.15	102.15	0.000	*
SBI: Upper Limit	108.34	108.34	0.001	*
SBI: Lower Limit	98.02	98.02	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	102.23	NONE	102.230	HIGH
SBI: Upper Limit	108.42	NONE	108.420	HIGH
SBI: Lower Limit	98.09	NONE	98.090	HIGH
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	102.42	102.42	0.000	*
Sub-Index Up Lim	108.63	108.63	0.005	*
Sub-Index Low Lim	98.28	98.28	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	102.43	102.43	0.000	*
SBI: Upper Limit	108.63	108.64	-0.006	*
SBI: Lower Limit	98.29	98.29	0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	102.23	NONE	102.230	HIGH
SBI: Upper Limit	108.42	NONE	108.420	HIGH
SBI: Lower Limit	98.09	NONE	98.090	HIGH
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	102.21	102.21	0.000	*
Special PCI	103.26	103.26	0.004	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

COPA	LEC	FCC	Delta	Flag
GENERAL				
GNPPI	0.00000			
X for CL, TS and SP	0.00000			
X for IX	0.0000			
EXOGENOUS CHANGES				
SPF	($5)			
DEM	$122			
LTS/TRS	$0			
ISW	$0			
RDA	$0			
DTAX	$0			
OTHER	$0			
TOTAL OF INDIVIDUALS	$117			
TOTAL EXOGENOUS	$115			
COMMON LINE				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.00000			
Proposed PCI	0.00	NONE	0.000	*
TRAFFIC SENSITIVE				
Local Switching				
Proposed SBI	98.08	98.08	0.000	*
SBI: Upper Limit	107.26	107.26	0.002	*
SBI: Lower Limit	97.05	97.04	0.007	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	98.08	98.08	0.000	*
SBI: Upper Limit	107.26	107.26	0.002	*
SBI: Lower Limit	97.05	97.04	0.007	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.40	98.40	0.000	*
SBI: Upper Limit	107.61	107.61	0.002	*
SBI: Lower Limit	97.36	97.36	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	98.10	98.10	0.000	*
TS PCI	102.18	102.18	-0.002	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW

COPA	LEC	FCC	Delta	Flag
SPECIAL				
VG, MT, TG				
Proposed SBI	97.65	97.65	0.000	*
SBI: Upper Limit	103.39	103.40	-0.007	*
SBI: Lower Limit	93.54	93.55	-0.010	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	97.87	NONE	97.870	HIGH
SBI: Upper Limit	103.63	NONE	103.630	HIGH
SBI: Lower Limit	93.76	NONE	93.760	HIGH
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	98.51	98.51	0.000	*
Sub-Index Up Lim	104.30	104.31	-0.007	*
Sub-Index Low Lim	94.37	94.37	-0.003	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	98.46	98.46	0.000	*
SBI: Upper Limit	104.25	104.25	-0.005	*
SBI: Lower Limit	94.32	94.33	-0.006	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	97.87	NONE	97.870	HIGH
SBI: Upper Limit	103.63	NONE	103.630	HIGH
SBI: Lower Limit	93.76	NONE	93.760	HIGH
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	97.87	97.87	0.000	*
Special PCI	98.69	98.70	-0.005	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

COTX	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.00000			
X for CL, TS and SP	0.00000			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	$15			
DEM	($371)			
LTS/TRS	$0			
ISW	$0			
RDA	$0			
DTAX	$0			
OTHER	$0			
TOTAL OF INDIVIDUALS	($356)			
TOTAL EXOGENOUS	($356)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.00000			
Proposed PCI	0.00	NONE	0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	95.51	95.51	-0.002	*
SBI: Upper Limit	100.31	100.31	-0.002	*
SBI: Lower Limit	90.76	90.76	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	95.55	95.55	-0.002	*
SBI: Upper Limit	99.95	99.96	-0.006	*
SBI: Lower Limit	90.44	90.44	0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	95.38	95.38	0.001	*
SBI: Upper Limit	103.13	103.12	0.008	*
SBI: Lower Limit	93.30	93.30	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	95.51	95.51	-0.003	*
TS PCI	95.51	95.51	0.004	*
LEC API Above PCI?				*
FCC API Above PCI?				*

COTX	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	97.98	97.98	0.000	*
SBI: Upper Limit	105.48	105.49	-0.005	*
SBI: Lower Limit	95.43	95.44	-0.009	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	97.94	97.94	0.000	*
SBI: Upper Limit	105.44	105.44	-0.002	*
SBI: Lower Limit	95.40	95.40	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	96.52	96.52	0.000	*
Sub-Index Up Lim	103.91	103.91	-0.003	*
Sub-Index Low Lim	94.02	94.02	0.003	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	96.76	96.76	0.000	*
SBI: Upper Limit	104.17	104.17	-0.002	*
SBI: Lower Limit	94.25	94.25	-0.001	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	97.94	NONE	97.940	HIGH
SBI: Upper Limit	105.44	NONE	105.440	HIGH
SBI: Lower Limit	95.40	NONE	95.400	HIGH
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	97.94	97.94	0.000	*
Special PCI	100.42	100.42	-0.001	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

COWW	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.00000			
X for CL, TS and SP	0.00000			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	($86)			
DEM	$350			
LTS/TRS	$0			
ISW	($27)			
RDA	$0			
DTAX	$0			
OTHER	$0			
TOTAL OF INDIVIDUALS	$237			
TOTAL EXOGENOUS	$234			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.00000			
Proposed PCI	0.00	NONE	0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	98.24	98.24	0.000	*
SBI: Upper Limit	106.74	106.75	-0.008	*
SBI: Lower Limit	96.58	96.58	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	98.21	98.21	0.000	*
SBI: Upper Limit	106.72	106.72	0.005	*
SBI: Lower Limit	96.55	96.55	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.51	98.51	0.005	*
SBI: Upper Limit	107.03	107.04	-0.006	*
SBI: Lower Limit	96.84	96.84	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	98.23	98.23	-0.000	*
TS PCI	101.66	101.66	-0.005	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW

COWW	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	98.19	98.19	-0.000	*
SBI: Upper Limit	103.38	103.38	-0.002	*
SBI: Lower Limit	93.53	93.54	-0.006	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	98.05	98.05	0.000	*
SBI: Upper Limit	103.23	103.23	-0.005	*
SBI: Lower Limit	93.40	93.40	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	98.21	98.21	0.000	*
Sub-Index Up Lim	103.40	103.40	-0.003	*
Sub-Index Low Lim	93.56	93.56	0.005	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	98.18	98.18	0.000	*
SBI: Upper Limit	103.37	103.37	-0.002	*
SBI: Lower Limit	93.53	93.53	0.003	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	98.19	NONE	98.190	HIGH
SBI: Upper Limit	103.38	NONE	103.380	HIGH
SBI: Lower Limit	93.53	NONE	93.530	HIGH
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	98.19	98.19	0.000	*
Special PCI	98.45	98.46	-0.006	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTAK	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	($124)			
DEM	$17			
LTS/TRS	$34			
ISW	$0			
RDA	$0			
DTAX	$0			
OTHER	$0			
TOTAL OF INDIVIDUALS	($73)			
TOTAL EXOGENOUS	($74)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	100.32	100.32	-0.004	*
SBI: Upper Limit	105.25	105.25	-0.002	*
SBI: Lower Limit	95.42	95.42	0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	100.36	100.36	0.001	*
SBI: Upper Limit	105.28	105.28	-0.004	*
SBI: Lower Limit	95.45	95.45	0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	100.28	100.28	-0.005	*
SBI: Upper Limit	105.22	105.22	0.000	*
SBI: Lower Limit	95.39	95.39	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	100.32	100.32	-0.004	*
TS PCI	100.33	100.33	-0.005	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTAK	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	98.52	98.52	-0.001	*
SBI: Upper Limit	103.41	103.41	-0.004	*
SBI: Lower Limit	93.62	93.62	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	98.52	98.52	-0.005	*
SBI: Upper Limit	103.40	103.40	-0.003	*
SBI: Lower Limit	93.61	93.61	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	0.00	NONE	0.000	*
Sub-Index Up Lim	0.00	NONE	0.000	*
Sub-Index Low Lim	0.00	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	0.00	NONE	0.000	*
Sub-Index Up Lim	0.00	NONE	0.000	*
Sub-Index Low Lim	0.00	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	98.52	98.52	-0.003	*
Special PCI	98.52	98.52	0.002	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTCA	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	$135			
DEM	($7,736)			
LTS/TRS	$10,319			
ISW	($9,778)			
RDA	$0			
DTAX	$1,933			
OTHER	$0			
TOTAL OF INDIVIDUALS	($5,127)			
TOTAL EXOGENOUS	($5,165)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	100.44	100.44	-0.005	*
SBI: Upper Limit	102.19	102.19	-0.001	*
SBI: Lower Limit	92.17	92.17	0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	92.19	92.19	-0.001	*
SBI: Upper Limit	102.21	102.21	-0.001	*
SBI: Lower Limit	92.19	92.19	0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	100.37	100.37	0.000	*
SBI: Upper Limit	102.32	102.32	-0.003	*
SBI: Lower Limit	92.29	92.29	0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	96.87	96.87	-0.001	*
TS PCI	97.20	97.20	0.002	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTCA	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	92.78	92.78	0.002	*
SBI: Upper Limit	102.37	102.37	-0.002	*
SBI: Lower Limit	92.77	92.77	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	98.20	98.20	0.004	*
SBI: Upper Limit	105.07	105.07	0.000	*
SBI: Lower Limit	95.22	95.22	0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	93.57	93.57	-0.001	*
Sub-Index Up Lim	102.32	102.32	0.002	*
Sub-Index Low Lim	92.72	92.72	-0.004	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	96.36	96.36	0.002	*
Sub-Index Up Lim	105.68	105.68	0.002	*
Sub-Index Low Lim	95.77	95.77	0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	92.72	92.72	0.001	*
SBI: Upper Limit	102.32	102.32	0.002	*
SBI: Lower Limit	92.72	92.72	-0.004	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	92.79	92.79	-0.002	*
Special PCI	102.60	102.60	-0.004	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTFL	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	($12,995)			
DEM	($6,214)			
LTS/TRS	$7,843			
ISW	($5,410)			
RDA	($1,941)			
DTAX	$2,226			
OTHER	$0			
TOTAL OF INDIVIDUALS	($16,491)			
TOTAL EXOGENOUS	($16,527)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	95.20	95.20	-0.001	*
SBI: Upper Limit	96.82	96.82	-0.001	*
SBI: Lower Limit	87.02	87.02	0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	87.04	87.04	-0.002	*
SBI: Upper Limit	96.84	96.84	-0.001	*
SBI: Lower Limit	87.04	87.04	0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	85.50	85.50	0.003	*
SBI: Upper Limit	91.90	91.90	-0.002	*
SBI: Lower Limit	82.60	82.60	0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	91.87	91.87	-0.004	*
TS PCI	91.93	91.93	0.001	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTFL	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	89.87	89.87	-0.005	*
SBI: Upper Limit	99.14	99.14	0.003	*
SBI: Lower Limit	89.84	89.84	0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	96.59	96.59	0.002	*
SBI: Upper Limit	103.18	103.18	0.003	*
SBI: Lower Limit	93.50	93.50	0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	90.61	90.61	0.004	*
Sub-Index Up Lim	99.15	99.15	0.002	*
Sub-Index Low Lim	89.85	89.85	0.003	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	100.00	100.00	0.000	*
Sub-Index Up Lim	106.60	106.60	0.001	*
Sub-Index Low Lim	96.60	96.60	0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	89.84	89.84	0.004	*
SBI: Upper Limit	99.14	99.14	0.003	*
SBI: Lower Limit	89.84	89.84	0.003	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	89.94	89.94	-0.004	*
Special PCI	99.57	99.57	0.003	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTHI	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES----------				
SPF	($1,069)			
DEM	($2,144)			
LTS/TRS	$1,650			
ISW	($1,933)			
RDA	$196			
DTAX	$1,146			
OTHER	$0			
TOTAL OF INDIVIDUALS	($2,154)			
TOTAL EXOGENOUS	($2,185)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	98.79	98.79	-0.002	*
SBI: Upper Limit	100.86	100.86	-0.004	*
SBI: Lower Limit	90.99	90.99	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	91.02	91.02	-0.005	*
SBI: Upper Limit	100.89	100.89	-0.005	*
SBI: Lower Limit	91.02	91.02	0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.87	98.87	0.000	*
SBI: Upper Limit	101.00	101.00	0.003	*
SBI: Lower Limit	91.11	91.11	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	95.29	95.29	-0.005	*
TS PCI	95.95	95.95	0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTHI	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	91.77	91.77	0.001	*
SBI: Upper Limit	101.15	101.15	0.004	*
SBI: Lower Limit	91.77	91.77	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	98.59	98.59	0.000	*
SBI: Upper Limit	106.38	106.38	0.002	*
SBI: Lower Limit	96.52	96.52	0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	91.76	91.76	0.002	*
Sub-Index Up Lim	101.12	101.12	-0.005	*
Sub-Index Low Lim	91.75	91.75	-0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	100.00	100.00	0.000	*
Sub-Index Up Lim	107.88	107.88	0.002	*
Sub-Index Low Lim	97.88	97.88	0.002	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	91.92	91.92	-0.005	*
SBI: Upper Limit	101.12	101.12	-0.005	*
SBI: Lower Limit	91.75	91.75	-0.001	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	92.06	92.06	0.004	*
Special PCI	101.57	101.57	-0.001	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW
INTEREXCH----------				
Interexchange API	95.38	95.38	0.000	*
Interexchange PCI	101.62	101.62	0.000	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW

GTIL	LEC	FCC	Delta	Flag
GENERAL				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES				
SPF	($108)			
DEM	($1,051)			
LTS/TRS	$1,199			
ISW	$0			
RDA	$0			
DTAX	$1,026			
OTHER	$0			
TOTAL OF INDIVIDUALS	$1,066			
TOTAL EXOGENOUS	$1,048			
COMMON LINE				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE				
Local Switching				
Proposed SBI	98.20	98.20	-0.002	*
SBI: Upper Limit	102.43	102.43	-0.004	*
SBI: Lower Limit	92.62	92.62	-0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	94.79	94.79	0.001	*
SBI: Upper Limit	102.53	102.53	0.002	*
SBI: Lower Limit	92.71	92.71	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.16	98.16	0.000	*
SBI: Upper Limit	102.50	102.50	0.004	*
SBI: Lower Limit	92.68	92.68	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	96.28	96.28	-0.003	*
TS PCI	97.58	97.58	0.002	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW

GTIL	LEC	FCC	Delta	Flag
SPECIAL				
VG, MT, TG				
Proposed SBI	101.28	101.28	0.004	*
SBI: Upper Limit	105.88	105.88	-0.003	*
SBI: Lower Limit	96.08	96.08	0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	99.84	99.84	0.004	*
SBI: Upper Limit	105.69	105.69	0.002	*
SBI: Lower Limit	95.90	95.90	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	101.50	101.50	0.001	*
Sub-Index Up Lim	106.10	106.10	0.001	*
Sub-Index Low Lim	96.27	96.27	-0.002	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	106.97	106.97	0.003	*
Sub-Index Up Lim	107.97	107.97	0.003	*
Sub-Index Low Lim	97.97	97.97	0.003	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	100.91	100.91	0.001	*
SBI: Upper Limit	106.07	106.07	0.004	*
SBI: Lower Limit	96.24	96.24	-0.002	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	101.03	101.03	-0.004	*
Special PCI	101.03	101.03	-0.001	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTIM	LEC	FCC	Delta	Flag
GENERAL				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES				
SPF	($133)			
DEM	($269)			
LTS/TRS	$312			
ISW	($117)			
RDA	$0			
DTAX	$127			
OTHER	$0			
TOTAL OF INDIVIDUALS	($80)			
TOTAL EXOGENOUS	($85)			
COMMON LINE				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE				
Local Switching				
Proposed SBI	98.01	98.01	0.003	*
SBI: Upper Limit	101.04	101.04	-0.004	*
SBI: Lower Limit	91.24	91.24	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	91.96	91.96	0.003	*
SBI: Upper Limit	101.84	101.84	0.002	*
SBI: Lower Limit	91.96	91.96	0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.63	98.63	0.001	*
SBI: Upper Limit	101.68	101.68	-0.003	*
SBI: Lower Limit	91.82	91.82	0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	95.90	95.89	0.006	*
TS PCI	96.32	96.32	0.002	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTIM	LEC	FCC	Delta	Flag
SPECIAL				
VG, MT, TG				
Proposed SBI	101.92	101.92	-0.002	*
SBI: Upper Limit	105.72	105.72	-0.001	*
SBI: Lower Limit	95.90	95.90	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	97.96	97.96	0.000	*
SBI: Upper Limit	105.46	105.46	-0.002	*
SBI: Lower Limit	95.67	95.67	0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	97.89	97.89	0.004	*
Sub-Index Up Lim	105.58	105.58	-0.001	*
Sub-Index Low Lim	95.77	95.77	-0.004	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	0.00	NONE	0.000	*
Sub-Index Up Lim	0.00	NONE	0.000	*
Sub-Index Low Lim	0.00	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	97.71	97.71	0.003	*
SBI: Upper Limit	105.58	105.58	-0.001	*
SBI: Lower Limit	95.77	95.77	-0.004	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	100.79	100.79	-0.003	*
Special PCI	100.79	100.79	-0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTIN	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	($1,430)			
DEM	($2,027)			
LTS/TRS	$1,544			
ISW	($1,831)			
RDA	($1,353)			
DTAX	$680			
OTHER	$0			
TOTAL OF INDIVIDUALS	($4,417)			
TOTAL EXOGENOUS	($4,408)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	97.74	97.74	0.002	*
SBI: Upper Limit	99.11	99.11	-0.003	*
SBI: Lower Limit	89.30	89.30	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	89.28	89.28	-0.001	*
SBI: Upper Limit	99.09	99.09	-0.003	*
SBI: Lower Limit	89.28	89.28	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.05	98.05	-0.003	*
SBI: Upper Limit	99.10	99.10	-0.003	*
SBI: Lower Limit	89.29	89.29	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	94.20	94.20	0.000	*
TS PCI	94.20	94.20	0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTIN	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	98.92	98.92	0.004	*
SBI: Upper Limit	103.47	103.47	-0.004	*
SBI: Lower Limit	93.65	93.65	0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	99.11	99.11	-0.001	*
SBI: Upper Limit	103.38	103.38	0.000	*
SBI: Lower Limit	93.56	93.56	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	100.62	100.62	-0.005	*
Sub-Index Up Lim	103.80	103.80	-0.001	*
Sub-Index Low Lim	93.94	93.94	-0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	100.00	100.00	0.000	*
Sub-Index Up Lim	105.27	105.27	-0.005	*
Sub-Index Low Lim	95.27	95.27	-0.005	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	98.38	98.38	0.004	*
SBI: Upper Limit	103.76	103.76	0.001	*
SBI: Lower Limit	93.90	93.90	-0.003	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	98.64	98.64	-0.003	*
Special PCI	98.64	98.64	-0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTMI	LEC	FCC	Delta	Flag
GENERAL				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES				
SPF	$1,221			
DEM	($723)			
LTS/TRS	$1,469			
ISW	($1,076)			
RDA	($331)			
DTAX	$431			
OTHER	$0			
TOTAL OF INDIVIDUALS	$991			
TOTAL EXOGENOUS	$981			
COMMON LINE				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE				
Local Switching				
Proposed SBI	98.62	98.62	0.001	*
SBI: Upper Limit	102.32	102.32	-0.001	*
SBI: Lower Limit	92.48	92.48	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	96.02	96.02	0.001	*
SBI: Upper Limit	102.31	102.31	-0.000	*
SBI: Lower Limit	92.47	92.47	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.37	98.37	0.000	*
SBI: Upper Limit	102.31	102.31	-0.000	*
SBI: Lower Limit	92.47	92.47	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	97.03	97.03	0.004	*
TS PCI	97.39	97.39	-0.002	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTMI	LEC	FCC	Delta	Flag
SPECIAL				
VG, MT, TG				
Proposed SBI	104.11	104.11	0.001	*
SBI: Upper Limit	104.39	104.39	0.005	*
SBI: Lower Limit	94.56	94.56	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	101.32	101.32	0.004	*
SBI: Upper Limit	104.34	104.34	-0.003	*
SBI: Lower Limit	94.52	94.52	-0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	96.93	96.93	-0.002	*
Sub-Index Up Lim	104.51	104.51	-0.003	*
Sub-Index Low Lim	94.68	94.68	0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	0.00	NONE	0.000	*
Sub-Index Up Lim	0.00	NONE	0.000	*
Sub-Index Low Lim	0.00	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	96.36	96.36	0.002	*
SBI: Upper Limit	104.47	104.47	-0.000	*
SBI: Lower Limit	94.64	94.64	-0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	99.50	99.50	-0.001	*
Special PCI	99.50	99.50	-0.005	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTMO	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	($232)			
DEM	($216)			
LTS/TRS	$319			
ISW	($14)			
RDA	($79)			
DTAX	$98			
OTHER	$0			
TOTAL OF INDIVIDUALS	($124)			
TOTAL EXOGENOUS	($126)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	97.75	97.75	-0.002	*
SBI: Upper Limit	100.40	100.40	-0.004	*
SBI: Lower Limit	90.59	90.59	0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	90.78	90.78	0.002	*
SBI: Upper Limit	100.62	100.62	0.001	*
SBI: Lower Limit	90.78	90.78	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	97.80	97.80	-0.005	*
SBI: Upper Limit	100.61	100.61	0.001	*
SBI: Lower Limit	90.77	90.77	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	95.55	95.55	-0.001	*
TS PCI	95.56	95.56	-0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTMO	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	104.52	104.52	-0.004	*
SBI: Upper Limit	105.13	105.13	-0.005	*
SBI: Lower Limit	95.31	95.31	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	99.71	99.69	0.016	HIGH
SBI: Upper Limit	104.81	104.81	-0.004	*
SBI: Lower Limit	95.02	95.02	0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	97.45	97.45	0.004	*
Sub-Index Up Lim	104.79	104.79	-0.002	*
Sub-Index Low Lim	95.00	95.00	0.002	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	100.00	100.00	0.000	*
Sub-Index Up Lim	107.00	107.00	0.004	*
Sub-Index Low Lim	97.00	97.00	0.004	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	97.41	97.40	0.005	*
SBI: Upper Limit	104.78	104.78	-0.002	*
SBI: Lower Limit	94.99	94.99	0.001	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	100.03	100.03	0.004	*
Special PCI	100.03	100.03	0.002	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTNA	LEC	FCC	Delta	Flag
GENERAL				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES				
SPF	($1,615)			
DEM	($466)			
LTS/TRS	$546			
ISW	($262)			
RDA	($665)			
DTAX	$55			
OTHER	$0			
TOTAL OF INDIVIDUALS	($2,407)			
TOTAL EXOGENOUS	($2,361)			
COMMON LINE				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE				
Local Switching				
Proposed SBI	98.33	98.33	0.003	*
SBI: Upper Limit	98.71	98.71	0.002	*
SBI: Lower Limit	88.88	88.88	-0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	90.73	90.73	0.000	*
SBI: Upper Limit	98.70	98.70	0.002	*
SBI: Lower Limit	88.87	88.87	-0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.23	98.23	0.000	*
SBI: Upper Limit	98.70	98.70	0.002	*
SBI: Lower Limit	88.87	88.87	-0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	93.79	93.79	0.000	*
TS PCI	93.79	93.79	0.004	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTNA	LEC	FCC	Delta	Flag
SPECIAL				
VG, MT, TG				
Proposed SBI	100.56	100.56	0.003	*
SBI: Upper Limit	103.33	103.33	-0.000	*
SBI: Lower Limit	93.47	93.47	-0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	97.25	97.25	-0.002	*
SBI: Upper Limit	103.35	103.35	-0.001	*
SBI: Lower Limit	93.49	93.49	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	93.63	93.63	-0.001	*
Sub-Index Up Lim	103.50	103.50	0.002	*
Sub-Index Low Lim	93.63	93.63	0.004	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	100.00	100.00	0.000	*
Sub-Index Up Lim	104.84	104.84	-0.000	*
Sub-Index Low Lim	94.84	94.84	-0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	94.41	94.41	0.004	*
SBI: Upper Limit	103.49	103.49	0.002	*
SBI: Lower Limit	93.62	93.62	0.003	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	98.43	98.43	0.002	*
Special PCI	98.43	98.43	-0.002	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTNB	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	($3,073)			
DEM	($2,304)			
LTS/TRS	$2,984			
ISW	($1,573)			
RDA	($1,382)			
DTAX	$560			
OTHER	$0			
TOTAL OF INDIVIDUALS	($4,788)			
TOTAL EXOGENOUS	($4,757)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	98.32	98.32	0.001	*
SBI: Upper Limit	100.32	100.32	-0.003	*
SBI: Lower Limit	90.50	90.50	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	92.71	92.71	-0.002	*
SBI: Upper Limit	100.33	100.33	-0.003	*
SBI: Lower Limit	90.51	90.51	0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.24	98.24	0.000	*
SBI: Upper Limit	100.32	100.32	-0.003	*
SBI: Lower Limit	90.50	90.50	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	95.41	95.41	-0.002	*
TS PCI	95.41	95.41	-0.001	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTNB	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	89.54	89.54	-0.002	*
SBI: Upper Limit	98.87	98.87	-0.004	*
SBI: Lower Limit	89.53	89.53	0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	97.52	97.52	0.003	*
SBI: Upper Limit	103.23	103.23	-0.002	*
SBI: Lower Limit	93.47	93.47	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	91.35	91.35	-0.001	*
Sub-Index Up Lim	99.22	99.22	-0.003	*
Sub-Index Low Lim	89.84	89.84	-0.003	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	100.00	100.00	0.000	*
Sub-Index Up Lim	105.78	105.78	-0.001	*
Sub-Index Low Lim	95.78	95.78	-0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	89.52	89.52	-0.002	*
SBI: Upper Limit	98.86	98.86	-0.003	*
SBI: Lower Limit	89.52	89.52	0.003	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	89.59	89.59	0.002	*
Special PCI	99.21	99.21	0.001	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTNE	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	($31)			
DEM	$86			
LTS/TRS	$112			
ISW	($102)			
RDA	$0			
DTAX	$35			
OTHER	$0			
TOTAL OF INDIVIDUALS	$100			
TOTAL EXOGENOUS	$100			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	103.59	103.59	0.004	*
SBI: Upper Limit	108.45	108.45	0.000	*
SBI: Lower Limit	98.59	98.59	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	102.40	102.39	0.007	*
SBI: Upper Limit	108.87	108.87	0.002	*
SBI: Lower Limit	98.97	98.97	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	103.56	103.56	0.003	*
SBI: Upper Limit	108.83	108.83	-0.005	*
SBI: Lower Limit	98.94	98.94	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	103.12	103.11	0.005	*
TS PCI	103.60	103.60	-0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTNE	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	98.94	98.94	-0.004	*
SBI: Upper Limit	103.49	103.49	-0.003	*
SBI: Lower Limit	93.71	93.71	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	100.37	100.37	0.005	*
SBI: Upper Limit	103.47	103.47	-0.002	*
SBI: Lower Limit	93.69	93.69	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	98.95	98.95	0.001	*
Sub-Index Up Lim	104.39	104.39	-0.002	*
Sub-Index Low Lim	94.53	94.53	0.004	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	100.00	100.00	0.000	*
Sub-Index Up Lim	105.81	105.81	-0.000	*
Sub-Index Low Lim	95.81	95.81	-0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	98.83	98.83	-0.000	*
SBI: Upper Limit	104.39	104.39	-0.002	*
SBI: Lower Limit	94.53	94.53	0.004	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	98.74	98.74	0.004	*
Special PCI	98.74	98.74	-0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTOH	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	$582			
DEM	($1,272)			
LTS/TRS	$1,471			
ISW	($663)			
RDA	($1,263)			
DTAX	$304			
OTHER	$0			
TOTAL OF INDIVIDUALS	($841)			
TOTAL EXOGENOUS	($848)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	98.59	98.59	-0.002	*
SBI: Upper Limit	100.78	100.78	-0.005	*
SBI: Lower Limit	90.95	90.95	0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	93.39	93.39	-0.004	*
SBI: Upper Limit	100.98	100.98	0.001	*
SBI: Lower Limit	91.12	91.12	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.60	98.60	0.000	*
SBI: Upper Limit	101.00	101.00	0.000	*
SBI: Lower Limit	91.14	91.14	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	95.96	95.96	-0.001	*
TS PCI	95.96	95.96	-0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTOH	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	102.81	102.81	0.003	*
SBI: Upper Limit	103.92	103.92	-0.000	*
SBI: Lower Limit	94.09	94.09	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	100.27	100.28	-0.007	*
SBI: Upper Limit	103.88	103.88	0.002	*
SBI: Lower Limit	94.05	94.05	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	95.80	95.80	-0.005	*
Sub-Index Up Lim	104.16	104.16	-0.003	*
Sub-Index Low Lim	94.31	94.31	-0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	100.00	100.00	0.000	*
Sub-Index Up Lim	105.73	105.73	0.002	*
Sub-Index Low Lim	95.73	95.73	0.002	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	94.29	94.29	0.005	*
SBI: Upper Limit	104.14	104.14	-0.002	*
SBI: Lower Limit	94.29	94.29	-0.002	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	99.07	99.07	-0.004	*
Special PCI	99.07	99.07	0.004	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTPA	LEC	FCC	Delta	Flag
GENERAL				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES				
SPF	$414			
DEM	($796)			
LTS/TRS	$1,002			
ISW	($783)			
RDA	$0			
DTAX	$308			
OTHER	$0			
TOTAL OF INDIVIDUALS	$145			
TOTAL EXOGENOUS	$141			
COMMON LINE				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE				
Local Switching				
Proposed SBI	98.32	98.32	0.002	*
SBI: Upper Limit	100.36	100.36	0.002	*
SBI: Lower Limit	90.54	90.54	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	90.95	90.95	-0.003	*
SBI: Upper Limit	99.98	99.98	0.000	*
SBI: Lower Limit	90.20	90.20	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	97.79	97.79	0.000	*
SBI: Upper Limit	99.99	99.99	0.000	*
SBI: Lower Limit	90.21	90.21	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	95.22	95.22	0.004	*
TS PCI	95.30	95.30	-0.005	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTPA	LEC	FCC	Delta	Flag
SPECIAL				
VG, MT, TG				
Proposed SBI	99.12	99.12	-0.005	*
SBI: Upper Limit	104.44	104.44	-0.005	*
SBI: Lower Limit	94.65	94.65	0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	98.36	98.36	-0.003	*
SBI: Upper Limit	104.34	104.34	0.002	*
SBI: Lower Limit	94.55	94.55	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	103.40	103.40	0.001	*
Sub-Index Up Lim	104.65	104.65	0.003	*
Sub-Index Low Lim	94.83	94.83	-0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	100.00	100.00	0.000	*
Sub-Index Up Lim	106.61	106.61	0.001	*
Sub-Index Low Lim	96.61	96.61	0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	100.16	100.16	-0.002	*
SBI: Upper Limit	104.64	104.64	0.003	*
SBI: Lower Limit	94.82	94.82	-0.002	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	99.61	99.61	-0.002	*
Special PCI	99.61	99.61	0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTSO	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES----------				
SPF	($1,017)			
DEM	($4,214)			
LTS/TRS	$4,377			
ISW	($2,114)			
RDA	($1,463)			
DTAX	$1,408			
OTHER	$0			
TOTAL OF INDIVIDUALS	($3,023)			
TOTAL EXOGENOUS	($3,043)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	98.88	98.88	0.003	*
SBI: Upper Limit	100.16	100.16	0.003	*
SBI: Lower Limit	90.28	90.28	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	91.34	91.34	-0.003	*
SBI: Upper Limit	100.25	100.25	0.002	*
SBI: Lower Limit	90.36	90.36	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.80	98.80	0.000	*
SBI: Upper Limit	100.20	100.20	0.003	*
SBI: Lower Limit	90.32	90.32	0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	95.03	95.03	-0.005	*
TS PCI	95.26	95.26	0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTSO	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	92.46	92.46	0.001	*
SBI: Upper Limit	102.04	102.04	-0.001	*
SBI: Lower Limit	92.46	92.46	0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	97.59	97.59	0.004	*
SBI: Upper Limit	104.39	104.39	-0.003	*
SBI: Lower Limit	94.59	94.59	0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	93.84	93.84	0.005	*
Sub-Index Up Lim	101.94	101.94	-0.005	*
Sub-Index Low Lim	92.37	92.37	0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	98.50	98.50	0.000	*
Sub-Index Up Lim	104.86	104.86	-0.002	*
Sub-Index Low Lim	95.01	95.01	-0.002	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	92.42	92.42	0.004	*
SBI: Upper Limit	102.00	102.00	0.002	*
SBI: Lower Limit	92.42	92.42	0.003	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	92.48	92.47	0.005	*
Special PCI	99.95	99.95	0.003	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW
INTEREXCH----------				
Interexchange API	97.93	97.93	0.001	*
Interexchange PCI	97.93	97.93	-0.005	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTSW	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	($986)			
DEM	($4,190)			
LTS/TRS	$5,251			
ISW	($2,530)			
RDA	($4,185)			
DTAX	$1,692			
OTHER	$0			
TOTAL OF INDIVIDUALS	($4,948)			
TOTAL EXOGENOUS	($4,957)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	98.19	98.19	0.002	*
SBI: Upper Limit	99.03	99.03	0.001	*
SBI: Lower Limit	89.22	89.22	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	89.86	89.86	0.000	*
SBI: Upper Limit	99.24	99.24	-0.001	*
SBI: Lower Limit	89.41	89.41	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.31	98.31	-0.000	*
SBI: Upper Limit	99.26	99.26	-0.001	*
SBI: Lower Limit	89.43	89.43	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	94.22	94.22	0.000	*
TS PCI	94.22	94.22	-0.001	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTSW	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	89.04	89.04	0.003	*
SBI: Upper Limit	98.36	98.36	-0.001	*
SBI: Lower Limit	89.04	89.04	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	89.38	89.38	0.001	*
SBI: Upper Limit	98.40	98.40	-0.003	*
SBI: Lower Limit	89.08	89.08	0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	90.03	90.03	0.001	*
Sub-Index Up Lim	98.39	98.39	-0.003	*
Sub-Index Low Lim	89.07	89.07	0.002	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	100.00	100.00	0.000	*
Sub-Index Up Lim	105.51	105.51	-0.005	*
Sub-Index Low Lim	95.51	95.51	-0.005	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	89.02	89.02	0.000	*
SBI: Upper Limit	98.34	98.34	0.000	*
SBI: Lower Limit	89.02	89.02	0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	89.03	89.03	0.001	*
Special PCI	98.71	98.71	0.004	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTTC	LEC	FCC	Delta	Flag
GENERAL				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES				
SPF	($20,286)			
DEM	$3,648			
LTS/TRS	$41,490			
ISW	($26,972)			
RDA	($7,791)			
DTAX	$6,633			
OTHER	$0			
TOTAL OF INDIVIDUALS	($3,278)			
TOTAL EXOGENOUS	($3,291)			
COMMON LINE				
Term Prem CCL Rate	0.02093	0.02094	-0.00001	*
Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
g	0.09250			
Proposed PCI	95.18	95.19	-0.003	*
TRAFFIC SENSITIVE				
Local Switching				
Proposed SBI	N/A	NONE	0.000	*
SBI: Upper Limit	N/A	NONE	0.000	*
SBI: Lower Limit	N/A	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	N/A	NONE	0.000	*
SBI: Upper Limit	N/A	NONE	0.000	*
SBI: Lower Limit	N/A	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	N/A	NONE	0.000	*
SBI: Upper Limit	N/A	NONE	0.000	*
SBI: Lower Limit	N/A	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	N/A	NONE	0.000	*
TS PCI	N/A	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTTC	LEC	FCC	Delta	Flag
SPECIAL				
VG, MT, TG				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	N/A	NONE	0.000	*
SBI: Upper Limit	N/A	NONE	0.000	*
SBI: Lower Limit	N/A	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	N/A	NONE	0.000	*
SBI: Upper Limit	N/A	NONE	0.000	*
SBI: Lower Limit	N/A	NONE	0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	N/A	NONE	0.000	*
Special PCI	N/A	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTWI	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	($158)			
DEM	($829)			
LTS/TRS	$1,057			
ISW	$0			
RDA	$0			
DTAX	$373			
OTHER	$0			
TOTAL OF INDIVIDUALS	$443			
TOTAL EXOGENOUS	$435			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.09250			
Proposed PCI	95.18	NONE	95.185	HIGH
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	98.26	98.26	-0.001	*
SBI: Upper Limit	100.89	100.89	0.005	*
SBI: Lower Limit	91.09	91.09	0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	91.90	91.90	0.005	*
SBI: Upper Limit	101.12	101.12	-0.002	*
SBI: Lower Limit	91.30	91.30	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.24	98.24	0.000	*
SBI: Upper Limit	101.13	101.13	-0.002	*
SBI: Lower Limit	91.31	91.31	0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	95.45	95.45	-0.001	*
TS PCI	96.09	96.09	-0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*

GTWI	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	102.27	102.27	-0.002	*
SBI: Upper Limit	105.80	105.80	0.002	*
SBI: Lower Limit	96.01	96.01	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	100.30	100.29	0.005	*
SBI: Upper Limit	105.60	105.60	-0.004	*
SBI: Lower Limit	95.84	95.84	0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	99.92	99.92	-0.001	*
Sub-Index Up Lim	105.85	105.85	-0.003	*
Sub-Index Low Lim	96.06	96.06	-0.002	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	0.00	NONE	0.000	*
Sub-Index Up Lim	0.00	NONE	0.000	*
Sub-Index Low Lim	0.00	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	99.09	99.09	0.005	*
SBI: Upper Limit	105.84	105.84	-0.002	*
SBI: Lower Limit	96.05	96.05	-0.002	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	100.92	100.92	-0.001	*
Special PCI	100.92	100.92	0.004	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

IL/IN	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.00000			
X for CL, TS and SP	0.00000			
X for IX	0.0300			
EXOGENOUS CHANGES----------				
SPF	($12)			
DEM	($21)			
LTS/TRS	$0			
ISW	($14)			
RDA	($11)			
DTAX	$10			
OTHER	$0			
TOTAL OF INDIVIDUALS	($48)			
TOTAL EXOGENOUS	($48)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.00000			
Proposed PCI	N/A	NONE	0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	N/A	NONE	0.000	*
SBI: Upper Limit	N/A	NONE	0.000	*
SBI: Lower Limit	N/A	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	N/A	NONE	0.000	*
SBI: Upper Limit	N/A	NONE	0.000	*
SBI: Lower Limit	N/A	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	N/A	NONE	0.000	*
SBI: Upper Limit	N/A	NONE	0.000	*
SBI: Lower Limit	N/A	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	N/A	NONE	0.000	*
TS PCI	N/A	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

IL/IN	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	102.27	NONE	102.270	HIGH
SBI: Upper Limit	105.80	NONE	105.800	HIGH
SBI: Lower Limit	96.01	NONE	96.010	HIGH
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	N/A	NONE	0.000	*
SBI: Upper Limit	N/A	NONE	0.000	*
SBI: Lower Limit	N/A	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	N/A	NONE	0.000	*
SBI: Upper Limit	N/A	NONE	0.000	*
SBI: Lower Limit	N/A	NONE	0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	N/A	NONE	0.000	*
Special PCI	N/A	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	95.07	95.07	0.002	*
Interexchange PCI	95.07	95.07	0.004	*
LEC API Above PCI?				*
FCC API Above PCI?				*

NA/NB	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.00000			
X for CL, TS and SP	0.00000			
X for IX	0.0300			
EXOGENOUS CHANGES----------				
SPF	($42)			
DEM	($13)			
LTS/TRS	$0			
ISW	($9)			
RDA	($18)			
DTAX	$2			
OTHER	$0			
TOTAL OF INDIVIDUALS	($80)			
TOTAL EXOGENOUS	($79)			
COMMON LINE----------				
Term Prem CCL Rate	0.00000	NONE	0.00000	*
Orig Prem CCL Rate	0.00000	NONE	0.00000	*
g	0.00000			
Proposed PCI	N/A	NONE	0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	N/A	NONE	0.000	*
SBI: Upper Limit	N/A	NONE	0.000	*
SBI: Lower Limit	N/A	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	N/A	NONE	0.000	*
SBI: Upper Limit	N/A	NONE	0.000	*
SBI: Lower Limit	N/A	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	N/A	NONE	0.000	*
SBI: Upper Limit	N/A	NONE	0.000	*
SBI: Lower Limit	N/A	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	N/A	NONE	0.000	*
TS PCI	N/A	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

NA/NB	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	102.27	NONE	102.270	HIGH
SBI: Upper Limit	105.80	NONE	105.800	HIGH
SBI: Lower Limit	96.01	NONE	96.010	HIGH
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	N/A	NONE	0.000	*
SBI: Upper Limit	N/A	NONE	0.000	*
SBI: Lower Limit	N/A	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	N/A	NONE	0.000	*
Sub-Index Up Lim	N/A	NONE	0.000	*
Sub-Index Low Lim	N/A	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	N/A	NONE	0.000	*
SBI: Upper Limit	N/A	NONE	0.000	*
SBI: Lower Limit	N/A	NONE	0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	N/A	NONE	0.000	*
Special PCI	N/A	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	92.35	92.35	-0.002	*
Interexchange PCI	92.35	92.35	-0.004	*
LEC API Above PCI?				*
FCC API Above PCI?				*

NETC	LEC	FCC	Delta	Flag
GENERAL				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES				
SPF	($11,035)			
DEM	($5,125)			
LTS/TRS	($599)			
ISW	($7,472)			
RDA	($14,427)			
DTAX	($79)			
OTHER	$2,488			
TOTAL OF INDIVIDUALS	($36,249)			
TOTAL EXOGENOUS	($36,249)			
COMMON LINE				
Term Prem CCL Rate	0.00679	0.00679	-0.00000	*
Orig Prem CCL Rate	0.00679	0.00679	-0.00000	*
g	0.05700			
Proposed PCI	90.63	90.63	0.002	*
TRAFFIC SENSITIVE				
Local Switching				
Proposed SBI	107.38	107.38	0.003	*
SBI: Upper Limit	107.39	107.38	0.006	*
SBI: Lower Limit	97.16	97.16	0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	92.32	92.33	-0.006	*
SBI: Upper Limit	99.80	99.80	-0.001	*
SBI: Lower Limit	90.30	90.30	0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	102.39	102.39	-0.003	*
SBI: Upper Limit	102.39	102.39	-0.001	*
SBI: Lower Limit	92.64	92.64	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	97.49	97.49	0.003	*
TS PCI	97.49	97.49	0.004	*
LEC API Above PCI?				*
FCC API Above PCI?				*

NETC	LEC	FCC	Delta	Flag
SPECIAL				
VG, MT, TG				
Proposed SBI	100.57	100.57	0.002	*
SBI: Upper Limit	103.96	103.96	-0.004	*
SBI: Lower Limit	94.06	94.06	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	99.01	99.01	-0.003	*
SBI: Upper Limit	103.99	103.99	0.005	*
SBI: Lower Limit	94.08	94.08	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	97.36	97.36	-0.003	*
Sub-Index Up Lim	103.89	103.89	-0.000	*
Sub-Index Low Lim	94.00	94.00	0.004	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	97.97	97.97	-0.004	*
Sub-Index Up Lim	103.78	103.78	-0.005	*
Sub-Index Low Lim	93.90	93.90	-0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	97.89	97.89	0.003	*
SBI: Upper Limit	103.88	103.88	0.000	*
SBI: Lower Limit	93.99	93.99	0.003	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	98.97	98.97	-0.003	*
Special PCI	98.97	98.97	-0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

NYNY	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES----------				
SPF	($11,508)			
DEM	($16,679)			
LTS/TRS	$0			
ISW	$0			
RDA	($30,904)			
DTAX	$10,459			
OTHER	($20,383)			
TOTAL OF INDIVIDUALS	($69,015)			
TOTAL EXOGENOUS	($69,012)			
COMMON LINE----------				
Term Prem CCL Rate	0.00780	0.00780	0.00000	*
Orig Prem CCL Rate	0.00780	0.00780	0.00000	*
g	0.05500			
Proposed PCI	96.49	96.49	0.004	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	106.54	106.54	-0.002	*
SBI: Upper Limit	106.55	106.55	0.004	*
SBI: Lower Limit	96.40	96.40	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	89.65	89.65	-0.002	*
SBI: Upper Limit	97.78	97.78	-0.004	*
SBI: Lower Limit	88.47	88.47	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	91.81	91.81	0.002	*
SBI: Upper Limit	101.47	101.47	-0.002	*
SBI: Lower Limit	91.81	91.81	0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	96.64	96.64	-0.000	*
TS PCI	96.64	96.64	-0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

NYNY	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	100.00	100.00	-0.004	*
SBI: Upper Limit	104.59	104.59	0.004	*
SBI: Lower Limit	94.63	94.63	0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	100.81	100.81	-0.004	*
SBI: Upper Limit	104.58	104.58	0.005	*
SBI: Lower Limit	94.62	94.62	0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	98.70	98.70	0.005	*
Sub-Index Up Lim	104.59	104.59	0.004	*
Sub-Index Low Lim	94.63	94.63	0.005	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	98.59	98.59	-0.002	*
Sub-Index Up Lim	104.59	104.59	0.004	*
Sub-Index Low Lim	94.63	94.63	0.005	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	99.14	99.14	0.003	*
SBI: Upper Limit	104.59	104.59	0.004	*
SBI: Lower Limit	94.63	94.63	0.005	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	99.61	99.61	0.004	*
Special PCI	99.61	99.61	0.005	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	98.61	98.61	0.004	*
Interexchange PCI	98.61	98.61	0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*

PTCA	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.04300			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	$151			
DEM	($15,037)			
LTS/TRS	($2,372)			
ISW	($23,146)			
RDA	($19,238)			
DTAX	$6,289			
OTHER	($3,437)			
TOTAL OF INDIVIDUALS	($56,790)			
TOTAL EXOGENOUS	($56,789)			
COMMON LINE----------				
Term Prem CCL Rate	0.00550	0.00551	-0.00001	*
Orig Prem CCL Rate	0.00550	0.00551	-0.00001	*
g	0.05440			
Proposed PCI	91.19	91.19	-0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	97.91	97.91	0.002	*
SBI: Upper Limit	99.53	99.53	0.003	*
SBI: Lower Limit	90.05	90.05	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	91.13	91.13	-0.000	*
SBI: Upper Limit	99.58	99.58	0.002	*
SBI: Lower Limit	90.09	90.09	-0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	99.07	99.07	0.000	*
SBI: Upper Limit	100.61	100.61	-0.004	*
SBI: Lower Limit	91.03	91.03	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	94.83	94.83	0.001	*
TS PCI	94.84	94.84	0.004	*
LEC API Above PCI?				*
FCC API Above PCI?				*

PTCA	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	102.20	102.20	-0.001	*
SBI: Upper Limit	102.71	102.72	-0.006	*
SBI: Lower Limit	92.93	92.93	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	98.11	98.11	0.000	*
SBI: Upper Limit	102.78	102.79	-0.009	*
SBI: Lower Limit	93.00	93.00	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	93.67	93.67	0.001	*
Sub-Index Up Lim	102.68	102.68	-0.004	*
Sub-Index Low Lim	92.90	92.90	-0.005	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	97.73	97.73	0.000	*
Sub-Index Up Lim	102.39	102.39	-0.001	*
Sub-Index Low Lim	92.64	92.64	0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	94.21	94.21	0.002	*
SBI: Upper Limit	102.65	102.65	-0.003	*
SBI: Lower Limit	92.87	92.88	-0.006	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	97.43	97.43	-0.005	*
Special PCI	97.81	97.81	-0.004	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

PTNV	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES----------				
SPF	($2,864)			
DEM	($680)			
LTS/TRS	$3,437			
ISW	($674)			
RDA	($591)			
DTAX	$32			
OTHER	$0			
TOTAL OF INDIVIDUALS	($1,340)			
TOTAL EXOGENOUS	($988)			
COMMON LINE----------				
Term Prem CCL Rate	0.00680	0.00680	-0.00000	*
Orig Prem CCL Rate	0.00680	0.00680	-0.00000	*
g	0.04100			
Proposed PCI	93.76	93.76	0.002	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	98.13	98.13	-0.005	*
SBI: Upper Limit	103.00	103.00	-0.002	*
SBI: Lower Limit	93.19	93.19	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	97.56	97.56	-0.004	*
SBI: Upper Limit	102.94	102.94	0.001	*
SBI: Lower Limit	93.13	93.14	-0.006	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	97.24	97.25	-0.014	LOW
SBI: Upper Limit	103.06	103.06	-0.005	*
SBI: Lower Limit	93.25	93.25	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	97.76	97.77	-0.008	*
TS PCI	98.16	98.16	0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*

PTNV	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	95.70	95.70	0.003	*
SBI: Upper Limit	105.56	105.56	-0.002	*
SBI: Lower Limit	95.51	95.51	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	102.84	102.84	0.000	*
SBI: Upper Limit	111.88	111.88	-0.003	*
SBI: Lower Limit	101.23	101.23	0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	107.75	107.74	0.011	HIGH
Sub-Index Up Lim	107.92	107.92	-0.003	*
Sub-Index Low Lim	97.65	97.64	0.005	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	0.00	NONE	0.000	*
Sub-Index Up Lim	0.00	NONE	0.000	*
Sub-Index Low Lim	0.00	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	106.69	106.69	-0.004	*
SBI: Upper Limit	108.52	108.52	-0.002	*
SBI: Lower Limit	98.19	98.19	0.004	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	101.94	101.94	0.000	*
Special PCI	101.94	101.93	0.006	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	100.00	100.00	0.000	*
Interexchange PCI	100.58	510.83	-410.249	LOW
LEC API Above PCI?				*
FCC API Above PCI?				LOW

RTTC	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04800			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	$330			
DEM	($539)			
LTS/TRS	($365)			
ISW	($68)			
RDA	$0			
DTAX	$0			
OTHER	($378)			
TOTAL OF INDIVIDUALS	($1,020)			
TOTAL EXOGENOUS	($1,121)			
COMMON LINE----------				
Term Prem CCL Rate	0.01312	0.01312	0.00000	*
Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
g	0.08770			
Proposed PCI	96.28	96.28	0.001	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	100.45	100.45	0.002	*
SBI: Upper Limit	105.21	105.21	0.003	*
SBI: Lower Limit	95.19	95.19	0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	99.72	99.72	-0.004	*
SBI: Upper Limit	105.15	105.15	-0.002	*
SBI: Lower Limit	95.14	95.14	0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	99.99	100.01	-0.015	LOW
SBI: Upper Limit	103.92	103.92	0.002	*
SBI: Lower Limit	94.02	94.02	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	100.19	100.19	-0.001	*
TS PCI	100.19	100.19	-0.001	*
LEC API Above PCI?				*
FCC API Above PCI?				*

RTTC	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	104.47	104.48	-0.006	*
SBI: Upper Limit	108.49	108.50	-0.007	*
SBI: Lower Limit	98.16	98.16	-0.004	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	99.43	99.43	0.001	*
SBI: Upper Limit	108.45	108.45	0.000	*
SBI: Lower Limit	98.12	98.12	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	101.08	101.09	-0.009	*
Sub-Index Up Lim	108.30	108.30	-0.004	*
Sub-Index Low Lim	97.99	97.99	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	103.74	103.74	-0.004	*
Sub-Index Up Lim	108.48	108.49	-0.006	*
Sub-Index Low Lim	98.15	98.15	-0.004	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	101.50	101.51	-0.008	*
SBI: Upper Limit	108.33	108.33	-0.001	*
SBI: Lower Limit	98.01	98.01	-0.004	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	103.28	103.28	-0.003	*
Special PCI	103.28	103.29	-0.006	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

SNCT	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04802			
X for CL, TS and SP	0.03300			
X for IX	0.0000			
EXOGENOUS CHANGES----------				
SPF	($4,828)			
DEM	($2,783)			
LTS/TRS	($1,944)			
ISW	($2,198)			
RDA	($3,033)			
DTAX	$1,135			
OTHER	$0			
TOTAL OF INDIVIDUALS	($13,651)			
TOTAL EXOGENOUS	($13,651)			
COMMON LINE----------				
Term Prem CCL Rate	0.00736	0.00736	0.00000	*
Orig Prem CCL Rate	0.00736	0.00736	0.00000	*
g	0.04380			
Proposed PCI	89.99	89.99	0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	101.63	101.63	-0.003	*
SBI: Upper Limit	105.67	105.67	0.001	*
SBI: Lower Limit	95.61	95.61	0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	99.53	99.53	-0.002	*
SBI: Upper Limit	105.67	105.67	0.001	*
SBI: Lower Limit	95.61	95.61	0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.78	98.78	-0.003	*
SBI: Upper Limit	105.67	105.67	0.001	*
SBI: Lower Limit	95.61	95.61	0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	100.64	100.64	0.001	*
TS PCI	100.64	100.64	0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*

SNCT	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	103.39	103.39	-0.005	*
SBI: Upper Limit	108.63	108.64	-0.006	*
SBI: Lower Limit	98.29	98.29	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	102.79	102.80	-0.009	*
SBI: Upper Limit	108.63	108.64	-0.006	*
SBI: Lower Limit	98.29	98.29	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	103.66	103.66	0.003	*
Sub-Index Up Lim	108.63	108.64	-0.006	*
Sub-Index Low Lim	98.29	98.29	0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	103.68	103.70	-0.015	LOW
Sub-Index Up Lim	108.63	108.64	-0.006	*
Sub-Index Low Lim	98.29	98.29	0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	103.52	103.52	0.003	*
SBI: Upper Limit	108.63	108.64	-0.006	*
SBI: Lower Limit	98.29	98.29	0.001	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	103.46	103.46	-0.004	*
Special PCI	103.46	103.46	-0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

SWTR	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04802			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES----------				
SPF	($3,595)			
DEM	($12,308)			
LTS/TRS	($3,735)			
ISW	($16,297)			
RDA	($34,560)			
DTAX	$5,976			
OTHER	$0			
TOTAL OF INDIVIDUALS	($64,519)			
TOTAL EXOGENOUS	($64,033)			
COMMON LINE----------				
Term Prem CCL Rate	0.00840	0.00847	-0.00007	*
Orig Prem CCL Rate	0.00840	0.00847	-0.00007	*
g	0.05870			
Proposed PCI	90.56	90.56	0.001	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	100.74	100.74	0.002	*
SBI: Upper Limit	101.44	101.44	-0.002	*
SBI: Lower Limit	91.78	91.78	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	93.80	93.80	0.002	*
SBI: Upper Limit	101.76	101.76	-0.003	*
SBI: Lower Limit	92.07	92.07	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	98.01	98.01	0.005	*
SBI: Upper Limit	101.63	101.63	0.002	*
SBI: Lower Limit	91.95	91.95	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	96.79	96.79	0.003	*
TS PCI	96.79	96.79	0.001	*
LEC API Above PCI?				*
FCC API Above PCI?				*

SWTR	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	101.58	101.58	-0.002	*
SBI: Upper Limit	104.55	104.55	-0.002	*
SBI: Lower Limit	94.59	94.59	-0.005	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	101.88	101.88	-0.002	*
SBI: Upper Limit	105.24	105.24	0.004	*
SBI: Lower Limit	95.21	95.21	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	97.79	97.79	-0.003	*
Sub-Index Up Lim	104.46	104.47	-0.007	*
Sub-Index Low Lim	94.51	94.52	-0.007	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	97.75	97.75	0.000	*
Sub-Index Up Lim	104.43	104.43	-0.005	*
Sub-Index Low Lim	94.49	94.49	0.002	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	98.06	98.06	-0.003	*
SBI: Upper Limit	104.49	104.49	0.002	*
SBI: Lower Limit	94.54	94.54	0.003	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	99.55	99.55	-0.002	*
Special PCI	99.55	99.55	-0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	99.38	99.38	0.001	*
Interexchange PCI	99.41	99.41	0.005	*
LEC API Above PCI?				*
FCC API Above PCI?				*

USTR	LEC	FCC	Delta	Flag
GENERAL				
GNPPI	0.04802			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES				
SPF	($40,195)			
DEM	($19,505)			
LTS/TRS	($752)			
ISW	($14,134)			
RDA	($25,752)			
DTAX	$2,422			
OTHER	$0			
TOTAL OF INDIVIDUALS	($97,916)			
TOTAL EXOGENOUS	($96,593)			
COMMON LINE				
Term Prem CCL Rate	0.00695	0.00693	0.00002	*
Orig Prem CCL Rate	0.00695	0.00693	0.00002	*
g	0.06303			
Proposed PCI	87.31	87.31	0.000	*
TRAFFIC SENSITIVE				
Local Switching				
Proposed SBI	107.99	107.99	-0.004	*
SBI: Upper Limit	107.99	107.99	0.003	*
SBI: Lower Limit	97.70	97.70	-0.003	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	92.46	92.46	0.001	*
SBI: Upper Limit	100.48	100.48	-0.002	*
SBI: Lower Limit	90.91	90.91	-0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	88.44	88.44	0.002	*
SBI: Upper Limit	97.75	97.75	0.002	*
SBI: Lower Limit	88.44	88.44	0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	97.50	97.50	0.004	*
TS PCI	97.99	97.99	-0.003	*
LEC API Above PCI?				*
FCC API Above PCI?				*

USTR	LEC	FCC	Delta	Flag
SPECIAL				
VG, MT, TG				
Proposed SBI	98.18	98.30	-0.118	LOW
SBI: Upper Limit	100.34	100.33	0.007	*
SBI: Lower Limit	90.78	90.78	0.002	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	93.44	93.44	-0.002	*
SBI: Upper Limit	99.73	99.73	0.001	*
SBI: Lower Limit	90.23	90.23	-0.001	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	103.13	103.13	-0.004	*
Sub-Index Up Lim	110.07	110.07	-0.002	*
Sub-Index Low Lim	99.59	99.59	0.001	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	103.13	103.13	-0.003	*
Sub-Index Up Lim	110.07	110.07	0.005	*
Sub-Index Low Lim	99.58	99.58	-0.003	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	103.13	103.13	-0.004	*
SBI: Upper Limit	110.07	110.07	-0.002	*
SBI: Lower Limit	99.59	99.59	0.001	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	99.84	99.89	-0.047	LOW
Special PCI	99.84	99.84	0.001	*
LEC API Above PCI?				*
FCC API Above PCI?				HIGH
INTEREXCH				
Interexchange API	97.54	97.54	-0.005	*
Interexchange PCI	97.55	97.55	0.005	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTEG	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04802			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES----------				
SPF	($644)			
DEM	($956)			
LTS/TRS	$0			
ISW	($451)			
RDA	$0			
DTAX	$269			
OTHER	$0			
TOTAL OF INDIVIDUALS	($1,782)			
TOTAL EXOGENOUS	($1,792)			
COMMON LINE----------				
Term Prem CCL Rate	0.00997	0.00997	-0.00000	*
Orig Prem CCL Rate	0.00997	0.00997	-0.00000	*
g	0.01837			
Proposed PCI	95.31	95.31	0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	98.88	98.88	0.000	*
SBI: Upper Limit	101.02	101.02	0.000	*
SBI: Lower Limit	91.40	91.40	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	91.42	91.42	0.000	*
SBI: Upper Limit	101.04	101.04	0.000	*
SBI: Lower Limit	91.42	91.42	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	96.22	96.22	-0.000	*
SBI: Upper Limit	101.02	101.02	0.000	*
SBI: Lower Limit	91.40	91.40	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	96.23	96.23	-0.000	*
TS PCI	96.23	96.23	-0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTEG	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	98.52	98.52	0.000	*
SBI: Upper Limit	106.95	106.95	-0.000	*
SBI: Lower Limit	96.77	96.77	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	97.73	97.73	-0.000	*
SBI: Upper Limit	106.95	106.95	-0.000	*
SBI: Lower Limit	96.77	96.77	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	106.72	106.72	0.000	*
Sub-Index Up Lim	106.95	106.95	-0.000	*
Sub-Index Low Lim	96.76	96.76	-0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	0.00	NONE	0.000	*
Sub-Index Up Lim	0.00	NONE	0.000	*
Sub-Index Low Lim	0.00	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	105.82	105.82	0.000	*
SBI: Upper Limit	106.95	106.95	-0.000	*
SBI: Lower Limit	96.76	96.76	-0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	101.86	101.86	-0.000	*
Special PCI	101.86	101.86	-0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTFL	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04802			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES----------				
SPF	($10,629)			
DEM	($4,309)			
LTS/TRS	$7,621			
ISW	$0			
RDA	$0			
DTAX	($441)			
OTHER	$0			
TOTAL OF INDIVIDUALS	($7,758)			
TOTAL EXOGENOUS	($7,758)			
COMMON LINE----------				
Term Prem CCL Rate	0.02159	0.02159	0.00000	*
Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
g	0.04689			
Proposed PCI	95.34	95.34	-0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	95.03	95.03	0.000	*
SBI: Upper Limit	95.98	95.98	-0.000	*
SBI: Lower Limit	86.84	86.84	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	87.01	87.01	-0.000	*
SBI: Upper Limit	95.98	95.98	-0.000	*
SBI: Lower Limit	86.84	86.84	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	91.44	91.44	-0.000	*
SBI: Upper Limit	95.97	95.97	0.000	*
SBI: Lower Limit	86.83	86.83	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	91.41	91.41	-0.000	*
TS PCI	91.41	91.41	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTFL	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	97.05	97.05	0.000	*
SBI: Upper Limit	103.03	103.03	0.000	*
SBI: Lower Limit	93.22	93.22	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	97.91	97.91	-0.000	*
SBI: Upper Limit	103.03	103.03	0.000	*
SBI: Lower Limit	93.21	93.21	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	100.19	100.19	0.000	*
Sub-Index Up Lim	103.02	103.02	-0.000	*
Sub-Index Low Lim	93.21	93.21	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	0.00	NONE	0.000	*
Sub-Index Up Lim	0.00	NONE	0.000	*
Sub-Index Low Lim	0.00	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	99.83	99.83	-0.000	*
SBI: Upper Limit	103.02	103.02	-0.000	*
SBI: Lower Limit	93.21	93.21	-0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	98.12	98.12	-0.000	*
Special PCI	98.12	98.12	-0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTIN	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04802			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES----------				
SPF	($464)			
DEM	($475)			
LTS/TRS	$454			
ISW	($262)			
RDA	$0			
DTAX	$168			
OTHER	$0			
TOTAL OF INDIVIDUALS	($579)			
TOTAL EXOGENOUS	($573)			
COMMON LINE----------				
Term Prem CCL Rate	0.01845	0.01845	-0.00000	*
Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
g	0.11714			
Proposed PCI	90.98	90.98	0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	97.66	97.66	0.000	*
SBI: Upper Limit	102.14	102.14	0.000	*
SBI: Lower Limit	92.41	92.41	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	96.59	96.59	-0.000	*
SBI: Upper Limit	102.14	102.14	-0.000	*
SBI: Lower Limit	92.41	92.41	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	97.26	97.26	-0.000	*
SBI: Upper Limit	102.13	102.13	-0.000	*
SBI: Lower Limit	92.40	92.40	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	97.27	97.27	0.000	*
TS PCI	97.27	97.27	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTIN	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	101.67	101.67	-0.000	*
SBI: Upper Limit	107.88	107.88	-0.000	*
SBI: Lower Limit	97.60	97.60	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	97.65	97.65	-0.000	*
SBI: Upper Limit	107.79	107.79	-0.000	*
SBI: Lower Limit	97.53	97.53	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	104.09	104.09	0.000	*
Sub-Index Up Lim	107.87	107.87	-0.000	*
Sub-Index Low Lim	97.60	97.60	-0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	0.00	NONE	0.000	*
Sub-Index Up Lim	0.00	NONE	0.000	*
Sub-Index Low Lim	0.00	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	104.19	104.19	-0.000	*
SBI: Upper Limit	107.87	107.87	0.000	*
SBI: Lower Limit	97.60	97.60	-0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	102.74	102.74	-0.000	*
Special PCI	102.74	102.74	-0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTMW	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04802			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES----------				
SPF	($1,033)			
DEM	($773)			
LTS/TRS	$2,484			
ISW	($298)			
RDA	$0			
DTAX	$617			
OTHER	$0			
TOTAL OF INDIVIDUALS	$996			
TOTAL EXOGENOUS	$1,007			
COMMON LINE----------				
Term Prem CCL Rate	0.02663	0.02663	-0.00000	*
Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
g	0.04294			
Proposed PCI	99.87	99.87	-0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	101.51	101.51	-0.000	*
SBI: Upper Limit	103.23	103.23	-0.000	*
SBI: Lower Limit	93.40	93.40	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	93.40	93.40	0.000	*
SBI: Upper Limit	103.23	103.23	0.000	*
SBI: Lower Limit	93.40	93.40	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	97.02	97.02	-0.000	*
SBI: Upper Limit	103.22	103.22	0.000	*
SBI: Lower Limit	93.39	93.39	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	98.31	98.31	0.000	*
TS PCI	98.31	98.31	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTMW	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	99.03	99.03	-0.000	*
SBI: Upper Limit	106.27	106.27	0.000	*
SBI: Lower Limit	96.15	96.15	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	101.22	101.22	0.000	*
SBI: Upper Limit	106.28	106.28	0.000	*
SBI: Lower Limit	96.16	96.16	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	106.26	106.26	-0.000	*
Sub-Index Up Lim	106.26	106.26	0.000	*
Sub-Index Low Lim	96.14	96.14	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	0.00	NONE	0.000	*
Sub-Index Up Lim	0.00	NONE	0.000	*
Sub-Index Low Lim	0.00	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	106.26	106.26	-0.000	*
SBI: Upper Limit	106.27	106.27	0.000	*
SBI: Lower Limit	96.14	96.14	0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	101.21	101.21	0.000	*
Special PCI	101.21	101.21	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTNC	LEC	FCC	Delta	Flag
GENERAL				
GNPPI	0.04802			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES				
SPF	$145			
DEM	($1,018)			
LTS/TRS	$0			
ISW	$0			
RDA	$0			
DTAX	$546			
OTHER	$0			
TOTAL OF INDIVIDUALS	($327)			
TOTAL EXOGENOUS	($327)			
COMMON LINE				
Term Prem CCL Rate	0.01138	0.01138	0.00000	*
Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
g	0.03716			
Proposed PCI	98.65	98.65	0.000	*
TRAFFIC SENSITIVE				
Local Switching				
Proposed SBI	99.87	99.87	-0.000	*
SBI: Upper Limit	101.63	101.63	-0.000	*
SBI: Lower Limit	91.95	91.95	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	94.05	94.05	0.000	*
SBI: Upper Limit	101.63	101.63	0.000	*
SBI: Lower Limit	91.95	91.95	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	96.17	96.17	-0.000	*
SBI: Upper Limit	101.62	101.62	0.000	*
SBI: Lower Limit	91.94	91.94	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	96.79	96.79	-0.000	*
TS PCI	96.79	96.79	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTNC	LEC	FCC	Delta	Flag
SPECIAL				
VG, MT, TG				
Proposed SBI	98.13	98.13	0.000	*
SBI: Upper Limit	105.39	105.39	0.000	*
SBI: Lower Limit	95.35	95.35	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	99.56	99.56	-0.000	*
SBI: Upper Limit	105.26	105.26	0.000	*
SBI: Lower Limit	95.23	95.23	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	101.99	101.99	0.000	*
Sub-Index Up Lim	105.38	105.38	0.000	*
Sub-Index Low Lim	95.35	95.35	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	0.00	NONE	0.000	*
Sub-Index Up Lim	0.00	NONE	0.000	*
Sub-Index Low Lim	0.00	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	101.94	101.94	0.000	*
SBI: Upper Limit	105.38	105.38	0.000	*
SBI: Lower Limit	95.35	95.35	0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	100.37	100.37	0.000	*
Special PCI	100.37	100.37	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTNW	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04802			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES----------				
SPF	($737)			
DEM	($700)			
LTS/TRS	$814			
ISW	$0			
RDA	$0			
DTAX	$50			
OTHER	$0			
TOTAL OF INDIVIDUALS	($572)			
TOTAL EXOGENOUS	($572)			
COMMON LINE----------				
Term Prem CCL Rate	0.02561	0.02562	-0.00001	*
Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
g	0.06104			
Proposed PCI	98.08	98.09	-0.015	LOW
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	96.86	96.86	-0.000	*
SBI: Upper Limit	96.90	96.90	0.000	*
SBI: Lower Limit	87.68	87.68	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	88.36	88.36	0.000	*
SBI: Upper Limit	96.90	96.90	0.000	*
SBI: Lower Limit	87.68	87.68	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	92.12	92.12	0.000	*
SBI: Upper Limit	96.90	96.90	-0.000	*
SBI: Lower Limit	87.67	87.67	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	92.28	92.28	-0.000	*
TS PCI	92.29	92.29	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTNW	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	99.73	99.73	0.000	*
SBI: Upper Limit	105.42	105.42	-0.000	*
SBI: Lower Limit	95.38	95.38	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	97.46	97.46	0.000	*
SBI: Upper Limit	105.42	105.42	-0.000	*
SBI: Lower Limit	95.38	95.38	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	98.92	98.92	0.000	*
Sub-Index Up Lim	105.41	105.41	-0.000	*
Sub-Index Low Lim	95.38	95.38	-0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	0.00	NONE	0.000	*
Sub-Index Up Lim	0.00	NONE	0.000	*
Sub-Index Low Lim	0.00	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	99.52	99.52	0.000	*
SBI: Upper Limit	105.41	105.41	-0.000	*
SBI: Lower Limit	95.37	95.37	-0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	99.63	99.63	0.000	*
Special PCI	100.40	100.40	-0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTOH	LEC	FCC	Delta	Flag
GENERAL----------				
GNPPI	0.04802			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES----------				
SPF	$540			
DEM	($661)			
LTS/TRS	$0			
ISW	($35)			
RDA	$0			
DTAX	$155			
OTHER	$0			
TOTAL OF INDIVIDUALS	($1)			
TOTAL EXOGENOUS	($1)			
COMMON LINE----------				
Term Prem CCL Rate	0.01649	0.01649	0.00000	*
Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
g	0.10901			
Proposed PCI	96.97	96.97	0.000	*
TRAFFIC SENSITIVE----------				
Local Switching				
Proposed SBI	98.97	98.97	0.000	*
SBI: Upper Limit	102.90	102.90	0.000	*
SBI: Lower Limit	93.10	93.10	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	97.14	97.14	0.000	*
SBI: Upper Limit	102.90	102.90	0.000	*
SBI: Lower Limit	93.10	93.10	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	97.70	97.70	-0.000	*
SBI: Upper Limit	102.89	102.89	-0.000	*
SBI: Lower Limit	93.09	93.09	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	98.00	98.00	-0.000	*
TS PCI	98.00	98.00	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTOH	LEC	FCC	Delta	Flag
SPECIAL----------				
VG, MT, TG				
Proposed SBI	96.02	96.02	-0.000	*
SBI: Upper Limit	106.12	106.12	0.000	*
SBI: Lower Limit	96.01	96.01	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	96.01	96.01	0.000	*
SBI: Upper Limit	106.08	106.08	0.000	*
SBI: Lower Limit	95.97	95.97	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	105.50	105.50	0.000	*
Sub-Index Up Lim	106.12	106.12	-0.000	*
Sub-Index Low Lim	96.01	96.01	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	0.00	NONE	0.000	*
Sub-Index Up Lim	0.00	NONE	0.000	*
Sub-Index Low Lim	0.00	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	105.05	105.05	0.000	*
SBI: Upper Limit	106.12	106.12	-0.000	*
SBI: Lower Limit	96.01	96.01	-0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	101.07	101.07	0.000	*
Special PCI	101.07	101.07	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH----------				
Interexchange API	0.00	NONE	0.000	*
Interexchange PCI	0.00	NONE	0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTSE	LEC	FCC	Delta	Flag
GENERAL				
GNPPI	0.04802			
X for CL, TS and SP	0.03300			
X for IX	0.0300			
EXOGENOUS CHANGES				
SPF	$165			
DEM	($346)			
LTS/TRS	$0			
ISW	($141)			
RDA	$0			
DTAX	$100			
OTHER	$0			
TOTAL OF INDIVIDUALS	($221)			
TOTAL EXOGENOUS	($222)			
COMMON LINE				
Term Prem CCL Rate	0.01124	0.01124	0.00000	*
Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
g	0.03670			
Proposed PCI	98.22	98.22	-0.000	*
TRAFFIC SENSITIVE				
Local Switching				
Proposed SBI	102.78	102.78	-0.000	*
SBI: Upper Limit	102.78	102.78	-0.000	*
SBI: Lower Limit	92.99	92.99	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Local Transport				
Proposed SBI	93.25	93.25	-0.000	*
SBI: Upper Limit	102.78	102.78	-0.000	*
SBI: Lower Limit	92.99	92.99	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Information				
Proposed SBI	97.62	97.62	-0.000	*
SBI: Upper Limit	102.76	102.76	-0.000	*
SBI: Lower Limit	92.97	92.97	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Traffic Sensitive				
TS API	97.88	97.88	-0.000	*
TS PCI	97.88	97.88	-0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*

UTSE	LEC	FCC	Delta	Flag
SPECIAL				
VG, MT, TG				
Proposed SBI	97.28	97.28	-0.000	*
SBI: Upper Limit	105.90	105.90	-0.000	*
SBI: Lower Limit	95.81	95.81	-0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Audio & Video				
Proposed SBI	100.70	100.70	-0.000	*
SBI: Upper Limit	105.90	105.90	0.000	*
SBI: Lower Limit	95.82	95.82	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
HiCap				
DS1				
Prop Sub-Index	105.90	105.90	-0.000	*
Sub-Index Up Lim	105.90	105.90	-0.000	*
Sub-Index Low Lim	95.81	95.81	-0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
DS3				
Prop Sub-Index	0.00	NONE	0.000	*
Sub-Index Up Lim	0.00	NONE	0.000	*
Sub-Index Low Lim	0.00	NONE	0.000	*
LEC Sub-Ind Out?				*
FCC Sub-Ind Out?				*
Total HiCap				
Proposed SBI	105.90	105.90	0.000	*
SBI: Upper Limit	105.90	105.90	-0.000	*
SBI: Lower Limit	95.81	95.81	-0.000	*
LEC SBI Out?				*
FCC SBI Out?				*
Wideband				
Proposed SBI	0.00	NONE	0.000	*
SBI: Upper Limit	0.00	NONE	0.000	*
SBI: Lower Limit	0.00	NONE	0.000	*
LEC SBI Out Bounds?				*
FCC SBI Out Bounds?				*
Total Special Access				
Special API	100.85	100.85	-0.000	*
Special PCI	100.85	100.85	-0.000	*
LEC API Above PCI?				*
FCC API Above PCI?				*
INTEREXCH				
Interexchange API	99.19	99.19	0.000	*
Interexchange PCI	101.19	101.19	0.003	*
LEC API Above PCI?				LOW
FCC API Above PCI?				LOW

APPENDIX E

Price Cap Index Adjustments

Southwestern has incorrectly subtracted meet point billing payments from some of its tariffed traffic sensitive switched rates in computing the revenue weights which are used in its APIs and SBIs. The revenue weights Southwestern should use in its indexes must reflect the tariffed rates its charges. Therefore, Southwestern shall recompute its indexes without removing meet point billing payments.

US West, Bell Atlantic, Rochester, and United have all included Special Access Surcharge lines in the computation of the 'g' factor used in the Common Line PCI formula. Although Special Access Surcharge revenues are properly included in the computation of the common line revenue, common line revenue per minute, and subscriber line charge revenue per minute used in the carrier common line formula, Special Access Surcharge lines generate no CCL minutes, and thus should be excluded from the computation of 'g'.

The FCC Analyzer in Appendix D identifies a discrepancy between US West's reported Voice Grade, Metallic, and Telegraph SBI and the SBI which can be computed from the data on the TRP. This discrepancy also results in a computed Special Access API which is above the reported API. This computed API is also above the PCI. Investigation has revealed that US West rounded off its revenue weights before applying the SBI and API formulas. In this case, that rounding off has apparently resulted in an API above the PCI. US West must adjust its SBI and API computations to remove this rounding and adjust its rates as necessary to comply with the price cap rules.

APPENDIX F

COST CHARTS
Telephone Plant In Service (TPIS) Report Cards and Trend Analysis
Expense Less Depreciation (ELD) Report Cards and Trend Analysis

Chart RPTTPIS

Three-Year Report Card of Forecast Errors
Total Plant In Service (TPIS)
Thousands of Dollars

COSA	07/90 – 06/91			Annualized 04/89 – 12/89			Year 1988		
	TRP Forecast	Trended Actual	% Error	TRP Forecast	Actual	% Error	TRP Forecast	Actual	% Error
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
CBTC	$1,187,385	$1,182,402	0.4%	$1,130,600	$1,073,674	5.3%	$1,126,135	$1,086,097	3.7%
CEFL	$494,129	$493,501	0.1%	$453,818	$449,713	0.9%	$417,421	$416,489	0.2%
CEIL	$288,546	$286,640	0.7%	$257,943	$267,937	-3.7%	$259,112	$251,797	2.9%
CENV	$555,793	$580,015	-4.2%	$500,230	$492,929	1.5%	$469,623	$466,886	0.6%
CEVA	$438,289	$429,711	2.0%	$411,633	$399,079	3.1%	$375,773	$372,281	0.9%
LTNE	$392,638	$389,252	0.9%	$366,470	$364,958	0.4%	$365,002	$362,270	0.8%

COSA	Weighted Average of Forecast Errors (J)	Pass Report Card (K)
CBTC	2.6%	No
CEFL	0.4%	Yes
CEIL	-0.4%	Yes
CENV	-1.5%	Yes
CEVA	2.2%	No
LTNE	0.7%	Yes

Sources and Notes:
Column (A) – COS-4, Column F, Line 140 in the 1990 TRP.
Column (B) – COS-4, Column F, Line 340 in the 1991 TRP for 07/90-12/90. Actuals were not yet available for period 01/91-06/91; the 07/90-12/90 actuals were trended forward. The growth rate that was applied equals the annualized rate in the test year in the 1991 TRP over 12-month actuals in 1990. Column (B) equals [[quarterly average, 07/90-12/90]*[1+(1+(g^0.5)]]/2.
Columns (C), (F), (I) – The percentage difference of the forecast over the actual, i.e, [(forecast / actual) -1].
Columns (D), (E), (G), (H) – COS-4, Column F, lines 440, 540, 640, 740, or COS-2, Columns A-L, Row 370 in the 1991 TRP.
Column (J) – [[Column (C)*3]+[Column (F)*2)]+Column (I)]/6.
Column (K) – Equals yes if Column (J) is less than or equal to +2.0, and if data is not missing, else Column (K) equals no.

Chart TDTPIS

Adjustments to TRP Forecasts of Unseparated Costs
Total Plant In Service (TPIS)
Thousands of Dollars

	Forecasts		Upper Confidence Intervals Around Trend–Line Forecast		Adjustment to Column (A)		
COSA	TRP Forecast	Trend–Line Forecast	95% Confidence Interval	1 Standard Deviation	Tentative Amount	Final Amount	Column (F) as Percent of Column (A)
	(A)	(B)	(C)	(D)	(E)	(F)	(G)
CBTC	$1,264,093	$1,191,333	$1,242,108	$1,215,981	$48,112	$48,112	3.81%
CEFL	$527,886	$510,286	$531,901	$520,530	$0	$0	0.00%
CEIL	$301,459	n/a	n/a	n/a	$0	$0	0.00%
CENV	$639,872	$569,042	$590,998	$579,207	$48,874	$0	0.00%
CEVA	$450,538	n/a	n/a	n/a	$0	$0	0.00%
LTNE	$409,346	$393,699	$405,313	$399,076	$4,033	$4,033	0.99%

Sources and Notes:

n/a – Not applicable due an insufficient number of observations.

Column (A) – COS–4, Column (F), Row 140 in the 1991 TRP.

Columns (B,C,D) – Results of linear regression analysis, based on data in COS–2, Columns A–L, Row, 370, in the 1991 TRP and previous TRPs.

Column (E) – If the TRP forecast is no more than 1 standard deviation above the trend–line forecast, i.e., if Column (A) is less than or equal to Column (D), then Column (E) equals 0; if the TRP forecast is more than 1 standard deviation above the trend–line forecast and if the forecast report card test in Chart RPTTPIS, Column (K) equals no, then Column (E) equals the amount that Column (A) exceeds Column (D); if the TRP forecast is more than 1 standard deviation above the trend–line forecast and if the report card test in Chart RPTTPIS, Column (K) equals yes, then Column (E) equals the amount if any, that Column (A) exceeds the upper–95–percent confidence interval in Column (C).

Column (F) – Column (E) after review of tentative adjustment.

Column (G) – Column (F) as a percent of Column (A).

Chart SEPTPIS

Access Costs as a Percent of Unseparated Costs
Total Plant In Service (TPIS)
Thousands of Dollars

COSA	TRP Forecast of ELD				Ratio of Access Cost to Unseparated Cost		
		by Access Category					
	Unseparated	Common Line	Traffic Sensitive	Special Access	Common Line	Traffic Sensitive	Special Access
	(A)	(B)	(C)	(D)	(E)	(F)	(G)
CBTC	$1,264,094	$121,885	$103,792	$54,170	9.64%	8.21%	4.29%
CEFL	$527,886	$70,120	$55,570	$12,667	13.28%	10.53%	2.40%
CEIL	$301,459	$36,910	$29,362	$14,541	12.24%	9.74%	4.82%
CENV	$639,872	$95,923	$81,305	$18,485	14.99%	12.71%	2.89%
CEVA	$450,538	$71,028	$30,222	$7,082	15.77%	6.71%	1.57%
LTNE	$409,481	$42,340	$57,431	$11,254	10.34%	14.03%	2.75%

Sources and Notes:
Columns (A–D) – COS–1(P) in the 1991 TRP, Line 1690, Columns F, M, R, S.
Columns (E–G) – Columns (B–D) divided by Column (A).

Chart ADJTPIS

Adjustments by Access Category
Total Plant in service (TPIS)
Thousands of Dollars

COSA	Unseparated Adjustment	TPIS Adjustment by Access Category				Revenue Requirement Effect of Adjustment			
		Total Access	Common Line	Traffic Sensitive	Special Access	Total Access	Common Line	Traffic Sensitive	Special Access
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
CBTC	$48,112	$10,651	$4,639	$3,950	$2,062	$1,816	$791	$673	$351
CEFL	$0	$0	$0	$0	$0	$0	$0	$0	$0
CEIL	$0	$0	$0	$0	$0	$0	$0	$0	$0
CENV	$0	$0	$0	$0	$0	$0	$0	$0	$0
CEVA	$0	$0	$0	$0	$0	$0	$0	$0	$0
LTNE	$4,033	$1,094	$417	$566	$111	$199	$76	$103	$20

Sources and Notes:
Column (A) – Chart TDTPIS, Column (F).
Columns (B) – The sum of Columns (C–E).
Columns (C–E) – Column (A) multiplied by the ratio of access category cost to unseparated costs.
Ratios are from Chart SEPTPIS, Columns (E–G).
Columns (F) – The sum of Columns (G–I).
Columns (G–I) – Columns (C–E) multiplied by [11.25% * [1+(0.34/(1–0.34))]].

TPIS Trend-Line Analysis

The equation applied to estimate trend-line growth in Telephone Plant in Service (TPIS) is

$$TPIS_i = a_i + b_{1,i}*Time + b_{2,i}*USOA,$$

where

$TPIS_i$ = a series of quarterly data for each COSA $_i$,

Time = a time trend (t) of the data, t=1,2,3...n, and n is the trend value in Q2/92,

USOA = a variable to account for the introduction of the Part 32 Rules, equaling 0 before Q1/88 and 1 afterwards,

a_i = a constant estimated by linear regression, and

$b_{1-2,i}$ = coefficients estimated by linear regression.

The time trend for CBTC is estimated starting in Q1/84. Trends for CEFL and CENV begin at a later time, in Q1/86 and Q1/87 respectively, due to marked shifts in data. The trend begins in Q1/87 for LTNE, due to limitations on data availability.

The trend-line forecast is

$$\text{Test-Year } TPIS_i = [a_i*4 + b_{1,i}*((n-3)+(n-2)+..+n) + b_{2,i}*4] / 4.$$

The variance applied to calculate confidence intervals is

$$Var(TPIS_i, \text{Test Year}) = Var(a_i) + (((n-3)+(n-2)+..+n)/4)^2*Var(b_{1,i})$$
$$+ Var(b_{2,i}) + 2*(((n-3)+(n-2)+..+n)/4)*Cov(a_i,b_{1,i})$$
$$+ 2*Cov(a_i,b_{2,i}) + 2*((n-3)+(n-2)+..+n)/4)*Cov(b_{1,i},b_{2,i})$$
$$+ \text{Model Error.}$$

Chart RPTELD

Three-Year Report Card of Forecast Errors
Expense Less Depreciation (ELD)
Thousands of Dollars

COSA	07/90 – 06/91			Annualized 04/89 – 12/89			Year 1988		
	Forecast	Trended Actual	% Error	Forecast	Actual	% Error	Forecast	Actual	% Error
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
CBTC	$265,803	$273,013	-2.6%	$241,597	$249,571	-3.2%	$221,018	$216,992	1.9%
CEFL	$87,302	$92,316	-5.4%	$76,160	$83,141	-8.4%	$72,122	$65,413	10.3%
CEIL	$74,560	$75,392	-1.1%	$62,894	$71,762	-12.4%	n/a	--	--
CENV	$114,545	$109,122	5.0%	$96,306	$106,958	-10.0%	$96,051	$93,498	2.7%
CEVA	$77,728	$77,505	0.3%	$66,805	$72,317	-7.6%	n/a	--	--
LTNE	$65,094	$62,659	3.9%	$58,888	$58,400	0.8%	$61,883	$57,965	6.8%

COSA	Weighted Average of Forecast Errors (J)	Pass Report Card (K)
CBTC	-2.1%	Yes
CEFL	-3.8%	Yes
CEIL	n/a	n/a
CENV	-0.4%	Yes
CEVA	n/a	n/a
LTNE	3.3%	No

Sources and Notes:
n/a – Not applicable.
Column (A) – COS-4, Column F, Line 105 in the 1990 TRP.
Column (B) – COS-4, Column F, Line 305 in the 1991 TRP for 07/90 – 12/90. Actuals were not yet available for 01/91 – 06/91; the 07/90-12/90 actuals were trended forward. The trend-growth rate (g) that was applied equals the annualized-rate of growth in the Test Year in the 1991 TRP over 12-month 1990 actuals. Column (B) equals [sum of actuals, 07/90-12/90)]*[1+((1+g) ^ 0.5)].
Columns (C), (F), (I) – The percentage difference of the forecast over the actual, i.e, [(forecast / actual) -1].
Columns (D), (E), (G), (H) – COS-4, Column F, respectively, lines 405, 505, 605, 705.
Column (J) – [[Column (C)*3]+[Column (F)*2]+Column (I)]/6.
Column (K) – Equals yes if Column (J) is less than +2%, and if data are not missing, else Column (K) equals no.

Chart TDELD

Adjustments to TRP Forecasts of Unseparated Costs
Expense Less Depreciation (ELD)
Thousands of Dollars

COSA	Forecast		Upper Confidence Intervals Around Trend–Line Forecast		Adjustment to Column (A)		
	TRP Forecast	Trend–Line Forecast	95 % Confidence Interval	1 Standard Deviation	Tentative Amount	Final Amount	Column (F) as Percent of Column (A)
	(A)	(B)	(C)	(D)	(E)	(F)	(G)
CBTC	$280,134	$273,538	$308,255	$289,723	$0	$0	0.00%
CEFL	$99,311	$96,442	$106,897	$101,316	$0	$0	0.00%
CEIL	$79,871	n/a	n/a	n/a	$0	$0	0.00%
CENV	$129,315	$127,203	$138,690	$132,558	$0	$0	0.00%
CEVA	$82,726	n/a	n/a	n/a	$0	$0	0.00%
LTNE	$66,880	$64,568	$67,611	$65,934	$946	$946	1.41%

Sources and Notes:
n/a – Not applicable due to an insufficient number of observations.
Column (A) – COS–4, Column (F), Row 105 in the 1991 TRP. The value for CBTC is reduced by $4,738,000 due to the removal of Voluntary Employee Benefit Association (VEBA) amounts, removed from both historical and prospective data.
Columns (B–D) – Results from linear regression analysis, based on data in COS–2, Columns A–L,
Column (E) – If the TRP forecast is no more than 1 standard deviation above the trend–line forecast, i.e., if Column (A) is less than or equal to Column (D), then Column (E) equals 0; if the TRP forecast is more than 1 standard deviation above the trend–line forecast and if the report card test in Chart RPTELD, Column (K) equals no, then Column (E) equals the amount that Column (A) exceeds Column (D); if the TRP forecast is more than 1 standard deviation above the trend–line forecast and if the report card test in Chart RPTELD, Column (K) equals yes, then Column (E) equals only the amount if any, that Column (A) exceeds the upper–95–percent confidence interval in Column (C).
Column (F) – Column (E) after review of tentative adjustment.
Column (G) – Column (F) as a percent of Column (A).

Chart SEPELD

Access Costs as a Percent of Unseparated Costs
Expense Less Depreciation (ELD)
Thousands of Dollars

COSA	TRP Forecast of ELD				Ratio of Access Cost to Unseparated Cost		
		by Access Category					
	Unseparated	Common Line	Traffic Sensitive	Special Access	Common Line	Traffic Sensitive	Special Access
	(A)	(B)	(C)	(D)	(E)	(F)	(G)
CBTC	$285,671	$22,723	$18,589	$9,474	7.95%	6.51%	3.32%
CEFL	$98,560	$10,069	$9,117	$2,595	10.22%	9.25%	2.63%
CEIL	$78,425	$7,291	$6,197	$3,799	9.30%	7.90%	4.84%
CENV	$126,509	$13,846	$12,166	$3,729	10.94%	9.62%	2.95%
CEVA	$81,224	$9,000	$4,746	$1,267	11.08%	5.84%	1.56%
LTNE	$66,322	$4,176	$6,980	$1,535	6.30%	10.52%	2.31%

Sources and Notes:
Columns (A–D) – COS–1(P) in the 1991 TRP, Line 1190 minus Line 1180, Columns F, M, R, S.
Columns (E–G) – Columns (B–D) divided by Column (A).

Chart ADJELD

Adjustments by Access Category
Expense Less Depreciation (ELD)
Thousands of Dollars

COSA	ELD Adjustment by Access Category			
	Common Line	Traffic Sensitive	Special Access	Total Access
	(A)	(B)	(C)	(D)
CBTC	$0	$0	$0	$0
CEFL	$0	$0	$0	$0
CEIL	$0	$0	$0	$0
CENV	$0	$0	$0	$0
CEVA	$0	$0	$0	$0
LTNE	$60	$100	$22	$181

Sources and Notes:
Columns (A–C) – The adjustment to unseparated costs in Chart TDELD, Column (F), multiplied by Columns (E–G) of Chart SEPELD.
Column (D) – The sum of Columns (A–C). The sum may not exactly to total due to rounding.

ELD Trend-Line Analysis

The equation applied to estimate trend-line growth in Expense Less Depreciation (ELD) is

$$ELD_i = a_i + b_{1,i}*Time + b_{2,i}*USOA + b_{3,i}*Q1 + b_{4,i}*Q2 + b_{5,i}*Q3,$$

where ELD_i = a series of quarterly data for COSA $_i$,

Time = a time trend (t) of the data, t=1,2,3...n, and n is the trend value in Q2/92,

USOA = a variable accounting for the introduction of Part 32 Rules, equaling 0 before Q1/88, else 1,

Q1, Q2, Q3 = variables respectively for the first 3 quarters of a year, that equal 1 if the quarter quarter is the current quarter, else it equals 0,

a_i = a constant estimated by linear regression,

$b_{1-5,i}$, = coefficients estimated by linear regression.

The time trends for COSAs CBTC, CEFL, and CENV are estimated starting in Q1/86. The trend begins in Q1/87 for LTNE, due to limitations on data availability. Trends are not estimated for CEIL and CEVA due to an insufficient number of observations.

The trend-line forecast is

$$\text{Test-Year } ELD_i = a_i*4 + b_{1,i}*((n-3)+(n-2)+..+n) + b_{2,i}*4 + b_{3,i} + b_{4,i} + b_{5,i},$$

The variance applied to calculate confidence intervals is

$$\begin{aligned}Var_i(ELD, \text{Test Year}) &= 16*Var(a_i) + ((n-3)+(n-2)+..+n)^2*Var(b_{1,i}) \\ &+ 16*Var(b_{2,i}) + Var(b_{3,i}) + Var(b_{4,i}) + Var(b_{5,i}) \\ &+ 8*((n-3)+(n-2)+..+n)*Cov(a_i,b_{1,i}) + 32*Cov(a_i,b_{2,i}) \\ &+ 8*Cov(a_i,b_{3,i}) + 8*Cov(a_i,b_{4,i}) + 8*Cov(a_i,b_{5,i}) \\ &+ 8*((n-3)+(n-2)+..+n)*Cov(b_{1,i},b_{2,i}) \\ &+ 2*((n-3)+(n-2)+..+n)*Cov(b_{1,i},b_{3,i}) \\ &+ 2*((n-3)+(n-2)+..+n)*Cov(b_{1,i},b_{4,i}) \\ &+ 2*((n-3)+(n-2)+..+n)*Cov(b_{1,i},b_{5,i}) \\ &+ 8*[Cov(b_{2,i},b_{3,i})+Cov(b_{2,i},b_{4,i})+Cov(b_{2,i},b_{5,i})] \\ &+ 2*[Cov(b_3,b_4)+Cov(b_3,b_5)+Cov(b_4,b_5)] + (4*\text{Model Error}).\end{aligned}$$

APPENDIX G

DEMAND CHARTS
Common Line Report Cards and Trend Analysis
Traffic Sensitive Report Cards and Trend Analysis

Chart RPTTS

Three–Year Report Card of Forecast Errors
Traffic Sensitive Minutes of Use
Thousands of MOU

COSA	07/90 – 06/91			Annualized 04/89 – 12/89			Year 1988		
	Forecast	Trended Actual	% Error	Forecast	Actual	% Error	Forecast	Actual	% Error
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
CBTC	1,861,218	1,847,556	0.7%	1,640,985	1,693,721	–3.1%	1,474,983	1,527,686	–3.4%
CEFL	688,296	694,574	–0.9%	567,592	598,794	–5.2%	501,731	512,516	–2.1%
CEIL	437,625	449,982	–2.7%	374,692	398,221	–5.9%	352,041	394,993	–10.9%
CENV	1,571,988	1,575,856	–0.2%	1,391,449	1,064,816	30.7%	1,210,714	1,208,524	0.2%
CEVA	525,187	496,828	5.7%	405,261	459,501	–11.8%	404,241	407,900	–0.9%
LTNE	425,902	469,148	–9.2%	400,983	424,011	–5.4%	326,083	372,381	–12.4%

COSA	Weighted Average of Forecast Errors	Pass Report Card
	(J)	(K)
CBTC	–1.2%	Yes
CEFL	–2.5%	Yes
CEIL	–5.2%	No
CENV	10.1%	Yes
CEVA	–1.2%	Yes
LTNE	–8.5%	No

Sources and Notes:

Column (A) – DMD–3, Column B, Line 100 in the 1990 TRP.

Column (B) – DMD–1, Column (C), Rows 410–415 for 07/90–12/90. Actuals are not yet available for 01/91–06/91; the 07/90–12/90 actuals were trended forward. The trend– growth rate (g) that was applied equals the annualized–rate of growth in the test year in the 1991 TRP over 12–month 1990 actuals. Column (B) equals [sum of actuals, 07/90 – 12/90]*[1+((1+g) ^ 0.5)].

Columns (C), (F), (I) – the percentage difference of the forecast over the actual, i.e, [(forecast / actual) –1].

Columns (D), (E), (G), (H) – DMD–3, Column B, lines 140, 130, 160, 150.

Column (J) – [[Column (C)*3]+[Column (F)*2)]+Column (I)]/6.

Column (K) – Equals yes if Column (J) is less than –5%, and if data are not missing, else Column (K) equals no.

Chart ADJTS

Minutes of Use Adjustment
Traffic Sensitive Minutes of Use
Thousands of MOU

COSA	Forecasts		Lower Confidence Intervals Around Trend–LIne Forecast		Adjustment to Column (A) and Rate Adjustment Factor			
	TRP Forecast	Trend–Line Forecast	95% Confidence Interval	1 Standard Deviation	Tentative Amount	Final Amount	Column (F) as Percent of Column (A)	Rate Adjustment Factor
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
CBTC	1,962,000	1,967,632	1,896,482	1,934,071	0	0	0	
CEFL	755,121	772,888	740,877	757,789	0	0	0	
CEIL	445,229	478,790	451,213	465,934	20,705	20705	4.32%	99.93%
CENV	1,961,456	1,752,630	1,669,331	1,713,338	0	0	0	
CEVA	520,250	540,678	498,186	520,868	0	0	0	
LTNE	525,652	525,003	506,471	516,262	0	0	0	

Sources and Notes:

Column (A) – DMD–1, Column (C), Row 450 in the 1991 TRP.

Columns (B–D) – Results of linear regression analysis, based on data from DMD–1 of TRP in 1991 and in previous years.

Column (E) – If the TRP forecast is no less than 1 standard deviation below the trend–line forecast, i.e., if Column (A) is equal or greater than Column (D), then Column (E) equals 0; if the TRP forecast is more than 1 standard deviation below the trend–line forecast and if the report card test in Chart RPTTS, Column (K) equals no, then Column (E) equals the amount that Column (A) is below Column (D); if the TRP forecast is more than 1 standard deviation below the trend–line forecast and if the report card test in Chart RPTTS, Column (K) equals yes, then Column (E) equals only the amount, if any, that Column (A) is below the upper–95–percent confidence interval in Column (C).

Column (F) – Column (E) after review of tentative adjustment.

Column (G) – Column (F) as a percent of Column (A).

Column (H) – Equals 1–[0.16*Column (H)].

TS Trend-Line Analysis

The equation applied to estimate trend-line growth of Traffic Sensitive (TS) minutes of use is

$$TS_i = a_i + b_{1,i} * Time$$

where

TS_i = a series of quarterly data for COSA $_i$,

Time = a time trend (t) of the data, t=1,2,3...n, and n is the trend value in Q2/92,

a_i = a constant estimated by linear regression, and

$b_{1,i}$ = a coefficient estimated by linear regression.

Trends for COSAs CBTC, CEFL, CENV, LTNE are estimated starting in Q3/86. Trends for CEIL and CEVA begin in Q1/87, due to data limitations.

The trend-line forecast is

$$\text{Test-Year } TS_i = a_i * 12 + b_{1,i} * ((n-3)+(n-2)+..+n).$$

The variance applied to calculate confidence intervals is

$$Var(TS_i, \text{ Test Year}) = 16 * Var(a_i) + ((n-3)+(n-2)+..+n)^2 * Var(b_{1,i}) + 2*4*((n-3)+(n-2)+..+n) * Cov(a_i, b_{1,i}) + (4*\text{Model Error}).$$

Chart RPTCCL

Three–Year Report Card of Forecast Errors
Carrier Common Line Minutes of Use
Thousands of Minutes of Use

COSA	07/90 – 06/91			Annualized 04/89 – 12/89			Year 1988		
	Forecast	Trended Actual	% Error	Forecast	Actual	% Error	Forecast	Actual	% Error
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
CBTC	1,772,690	1,809,105	–2.01%	1,481,879	1,576,009	–5.97%	1,236,000	1,358,450	–9.01%
CEFL	674,393	702,100	–3.95%	550,042	591,419	–7.00%	487,030	492,136	–1.04%
CEIL	381,171	430,422	–11.44%	310,997	342,702	–9.25%	272,750	329,073	–17.12%
CENV	1,515,287	1,688,946	–10.28%	1,295,538	1,403,129	–7.67%	1,168,500	1,160,378	0.70%
CEVA	515,218	505,598	1.90%	395,458	407,759	–3.02%	326,673	346,240	–5.65%
LTNE	467,583	470,843	–0.69%	377,816	405,012	–6.71%	298,588	342,686	–12.87%

COSA	Weighted Average of Forecast Errors (J)	Pass Report Card (K)
CBTC	–4.50%	Yes
CEFL	–4.48%	Yes
CEIL	–11.66%	No
CENV	–7.58%	No
CEVA	–1.00%	Yes
LTNE	–4.73%	Yes

Sources and Notes:

Column (A) – DMD–3, Column A, Line 100 in the 1990 TRP.

Column (B) – DMD–1, Column I, Rows 250–270 for 07/90 – 12/90. Actuals are not yet available for 01/91 – 06/91; the 07/90–12/90 actuals were trended forward. The trend–growth rate (g) that was applied equals the annualized–rate of growth in the test year over 12–month actuals in 1990. Column (B) equals [sum of actuals, 07/90–12/90]*[(1+((1+g)^0.5))].

Columns (C), (F), (I) – the percentage difference of the forecast over the actual, i.e, [(forecast / actual) –1].

Columns (D),(E),(G),(H) – DMD–3, Column A, lines 140, 130, 160, 150 or DMD–1, Column I, Rows 100–215.

Column (J) – [[Column (C)*3]+[Column (F)*2)]+Column (I)]/6.

Column (K) – Equals yes if Column (J) is less than –5%, and if data are not missing, else Column (K) equals no.

Chart ADJCCL

Adjustments to TRP Forecasts of Minutes of Use
Carrier Common Line Minutes of Use
Thousands of Minutes of Use

COSA	Forecasts		Lower Confidence Intervals Around Trend–Line Forecast		Adjustment to Column (A)		
	TRP Forecast	Trend–Line Forecast	95% Confidence Interval	1 Standard Deviation	Tentative Adjustment	Final Adjustment	Column (F) as Percent of Column (A)
	(A)	(B)	(C)	(D)	(E)	(F)	(G)
CBTC	1,937,931	1,956,710	1,893,062	1,925,170	0	0	0.00%
CEFL	748,149	738,142	690,782	714,673	0	0	0.00%
CEIL	442,855	477,553	452,887	465,291	22,436	22,436	5.07%
CENV	1,927,858	1,871,242	1,795,295	1,833,607	0	0	0.00%
CEVA	516,869	548,796	510,603	529,870	0	0	0.00%
LTNE	521,198	516,846	503,767	510,365	0	0	0.00%

Sources and Notes:

Column (A) – DMD–1, Column (I), Row 295 in the 1991 TRP.

Column (B–D) – Results of linear regression analysis, based on data from DMD–1 of TRP in 1991 and in previous years.

Column (E) – If the TRP forecast is no less than 1 standard deviation below the trend–line forecast, i.e., if Column (A) is equal or greater than Column (D), then Column (E) equals 0; if the TRP forecast is more than 1 standard deviation below the trend–line forecast and if the report card test in Chart RPTCCL, Column (K) equals no, then Column (E) equals the amount that Column (A) is below Column (D); if the TRP forecast is more than 1 standard deviation below the trend–line forecast and if the report card test in Chart RPTCCL, Column (K) equals yes, then Column (E) equals only the amount, if any, that Column (A) is below the upper–95–percent confidence interval in Column (C).

Column (F) – Column (E) after review of tentative adjustment.

Column (G) – Column (F) as a percent of Column (A).

CCL Trend-Line Analysis

The equation applied to estimate trend-line growth in Carrier Common Line (CCL) minutes of use is

$$CCL_i = a_i + b_{1,i} * Time$$

where

CCL_i = a series of monthly data for each COSA $_i$,

Time = a time trend (t) of the data, t=1,2,3...n, and n is the trend value in Q2/92,

a_i = a constant estimated by linear regression, and

$b_{1,i}$ = a coefficient estimated by linear regression.

Trends are estimated for COSAs CBTC, CEFL, CENV, and LTNE starting in 06/86. Trends for CEIL and CEVA start in 10/87 due to data limitations.

The trend-line forecast is

$$\text{Test-Year } CCL_i = a_i*12 + b_{1,i}*((n-11)+(n-10)+..+n).$$

The variance applied to calculate confidence intervals is

$$Var(CCL_i, \text{ Test Year}) = 12^{\wedge 2}*Var(a_i) + ((n-11)+(n-10)+..+n)^2*Var(b_{1,i}) + 2*12*((n-11)+(n-10)+..+n)*Cov(a_i,b_{1,i}) + (12*\text{Model Error}).$$

APPENDIX H

OTHER BILLING AND COLLECTION
Other Billing and Collection Worksheet

OTHER BILLING & COLLECTING EXPENSE

SUMMARY REVENUE REQUIREMENT DISALLOWANCE CHART ($ TO NEAREST THOUSANDS)		COMMON LINE A	TS SWITCHED B	SPECIAL ACCESS C	TOTAL D
**TOTAL ALL COMPANIES		672			672
CENTRAL OF FLORIDA	CEFL	181			181
CENTRAL OF ILLINOIS	CEIL	89			89
CENTRAL OF NEVADA	CENV	208			208
CENTRAL OF VIRGINIA	CEVA	193			193

CORPORATE OPERATIONS EXPENSE

DISALLOWANCE RESULTING FROM THE RECALCULATION OF THE BIG 3 EXPENSE FACTOR ADJUSTED FOR THE OTHER BILLING AND COLLECTING EXPENSE DISALLOWANCE SHOWN ABOVE

SUMMARY REVENUE REQUIREMENT DISALLOWANCE CHART ($ TO NEAREST THOUSANDS)		COMMON LINE A	TS SWITCHED B	SPECIAL ACCESS C	TOTAL D
**TOTAL ALL COMPANIES		210			210
CENTRAL OF FLORIDA	CEFL	58			58
CENTRAL OF ILLINOIS	CEIL	25			25
CENTRAL OF NEVADA	CENV	69			69
CENTRAL OF VIRGINIA	CEVA	58			58

APPENDIX I

CORPORATE OPERATIONS EXPENSE
Corporate Operations Expense Worksheet

CORPORATE OPERATIONS EXPENSE

REVENUE REQUIREMENT
DISALLOWANCE CHART

	COMMON LINE A	TS SWITCHED B	SPECIAL ACCESS C	TOTAL D
LINCOLN TELEPHONE	15.9	27.6	5.9	49.4

APPENDIX J

RATE ADJUSTMENT FACTORS

Summary of Rate Adjustment Factors (RAFs) and Other Adjustments
by Access Category and Rate-of-Return Company
Thousands of Dollars and Thousands of Minutes of Use

Part 1 of 4. Common Line

COSA (A)	Prospective Revenue Requirement (B)	Cost Adjustment (C)	Minutes of Use Adjustment (D)
CBTC	$54,111	$791	0
CEFL	$7,904	$587	0
CEIL	$12,869	$115	22,436
CENV	$30,239	$277	0
CEVA	$18,796	$251	0
LTNE	$11,791	$152	0

Part 2 of 4. Traffic Sensitive

COSA (A)	Prospective Revenue Requirement (B)	Cost Adjustment (C)	Cost RAF (D)	Minutes of Use Adjustment (E)	Demand RAF (F)	Final RAF (G)
CBTC	$38,279	$673	98.24%	0	n/a	98.24%
CEFL	$17,967	$276	98.46%	0	n/a	98.46%
CEIL	$11,562	$0	n/a	20,705	99.93%	99.93%
CENV	$25,045	$0	n/a	0	n/a	n/a
CEVA	$9,645	$0	n/a	0	n/a	n/a
LTNE	$16,482	$231	98.60%	0	n/a	98.60%

Part 3 of 4. Special Access

COSA (A)	Prospective Revenue Requirement (B)	Cost Adjustment (C)	Cost RAF (D)
CBTC	$17,009	$351	97.94%
CEFL	$4,599	$63	98.63%
CEIL	$6,081	$0	n/a
CENV	$6,225	$0	n/a
CEVA	$2,289	$0	n/a
LTNE	$2,893	$48	98.34%

Summary of Rate Adjustment Factors (RAFs) and Other Adjustments
by Access Category and Rate-of-Return Company
Thousands of Dollars and Thousands of Minutes of Use

Part 4 of 4. Total (Excluding Demand Adjustments)

COSA (A)	Prospective Revenue Requirement (B)	Common Line (C)	Traffic Sensitive (D)	Special Access (E)	Total (F)	Column (F) as Percent of Column (B) (G)
CBTC	$109,399	$791	$673	$351	$1,815	1.66%
CEFL	$30,470	$587	$276	$63	$926	3.04%
CEIL	$30,512	$115	$0	$0	$115	0.38%
CENV	$61,509	$277	$0	$0	$277	0.45%
CEVA	$30,730	$251	$0	$0	$251	0.82%
LTNE	$31,166	$152	$231	$48	$430	1.38%
Total	$293,786	$2,173	$1,180	$462	$3,814	1.30%

Sources and Notes:
n/a – Not applicable.
Prospective Revenue Requirement – REV-2, Columns A, F, G, Line 120 in the 1991 TRP.
Cost Adjustment – Sum of adjustments in appendices. Most adjustments are allocated in the revelant appendix by access category. However, the allocation for an adjustment to LTNE's Corporate Operations Expense is not allocated as such. The allocation was made for the purpose of this chart by calculating the percent of total expense for each access category, where total expense is the access portion of Corporate Operations Expense in the test year in the 1991 TRP. Data for these calculations are from COS-1(P), Columns M,R,S Line 1160.
Cost RAF – Cost adjustment divided by prospective revenue requirement.
Minutes of Use Adjustment – From Charts ADJCCL and ADJTS.
Demand RAF – Charts ADJCCL for Common LIne and ADJTS for Traffic Sensitive.
Total RAF – The applicable cost RAF or applicable demand RAF.

APPENDIX K

EXOGENOUS CHANGE CHART

EXOGENOUS CHANGE ADJUSTMENTS

EXOGENOUS CHANGE ADJUSTMENT CHART ($ TO NEAREST THOUSAND)	COMPANY TOTALS COMMON LINE	TS SWITCHED	SPECIAL ACCESS	INTER EXCHANGE	TOTAL	TOTAL PRICE CAP REVENUE TRP SOURCE: (SUM1 R120+R160+ R210+R220/C.B)	PERCENT E / F
	A	B	C	D	E	F	G
** TOTAL ALL COMPANIES	$25,758	$17,524	$8,307	$65	$51,653	$18,569,992	0.28%
1 AMERITECH	$375	$0	$0	$0	$375	$2,211,896	0.02%
2 BELL ATLANTIC	$12,457	$9,986	$4,641	$59	$27,143	$2,675,153	1.01%
3 BELL SOUTH	$5,507	$2,278	$780	$0	$8,566	$2,640,408	0.32%
4 NEW YORK TELEPHONE	$814	$1,118	$386	$6	$2,324	$1,914,607	0.12%
5 NEW ENGLAND TELEPHONE	$0	$0	$0	$0	$0	$920,550	0.00%
6 PACIFIC TELEPHONE	$3,433	$2,000	$858	$0	$6,292	$1,428,346	0.44%
7 NEVADA BELL	$0	$0	$0	$0	$0	$44,516	0.00%
8 SOUTHWESTERN BELL TEL. CO.	$2,634	$1,790	$1,556	$0	$5,980	$1,579,569	0.38%
9 U.S. WEST	$0	$0	$0	$0	$0	$1,911,393	0.00%
10 CONTEL CO (EAST SOUTH RATE GROUP)	$253	($63)	$9	$0	$199	$38,891	0.51%
11 GTE	$0	$0	$0	$0	$0	$1,907,095	0.00%
12 ROCHESTER TELEPHONE CORP.	$0	$0	$0	$0	$0	$83,850	0.00%
13 SOUTHERN NEW ENGLAND TELEPHONE	$284	$414	$77	$0	$775	$314,963	0.25%
14 UNITED TELEPHONE SYSTEM	$0	$0	$0	$0	$0	$551,711	0.00%

NOTE: Column F, 'Total All Companies' amount, does not equal the sum of the revenue for the listed companies, because several companies with no disallowances are excluded from this chart.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN Docket No. 89-554

In the Matter of

An Inquiry Relating to
Preparation for the
International Telecommunication
Union World Administrative
Radio Conference for Dealing
with Frequency Allocations
in Certain Parts of the Spectrum

REPORT

Adopted: June 13, 1991; Released: June 20, 1991

By the Commission:

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INTRODUCTION

1. This *Report* recommends proposals to the U.S. Department of State for the World Administrative Radio Conference scheduled for February 3-March 3, 1992 (WARC-92) in Spain. The *Report* is the culmination of a proceeding begun in November 1989 with the issuance of a *Notice of Inquiry (NOI)*.[1] Subsequently, a *Second Notice of Inquiry (Second NOI)*[2] and a *Supplemental Notice of*

[1] *Notice of Inquiry*, GEN Docket No. 89-554, 4 FCC Rcd 8546 (1989).

[2] *Second Notice of Inquiry*, GEN Docket No. 89-554, 5 FCC Rcd 6046 (1990).

Inquiry (*Supplemental NOI*)[3] were issued. Comments to these three *Notices*, as well as other material developed during the course of this proceeding, including a detailed report prepared by the Steering Committee of the FCC Industry Advisory Committee (IAC) for WARC-92, form the basis for the *Report*.

BACKGROUND

2. The *NOI* in this proceeding followed the 13th Plenipotentiary Conference (Plenipot), held in Nice, France, May 23-June 29, 1989, which determined that a WARC should be held in 1992 to address frequency allocations in certain parts of the spectrum. Specifically, the Plenipot recommended that WARC-92 should consider the Resolutions and Recommendations of three previous International Telecommunication Union (ITU) conferences: namely, the WARC for the Planning of the High Frequency (HF) Bands Allocated to the Broadcasting Service, Second Session, 1987 (HFBC-87); the WARC for the Mobile Services, 1987 (MOB-87); and the WARC on the use of the Geostationary Satellite Orbit (GSO) and on the Planning of Space Services Utilizing It, Second Session, 1988 (ORB-88). Additionally, the Plenipot recommended that WARC-92 review Articles 55(Rev.) and 56(Rev.) and Appendix 26 of the international Radio Regulations (RR) and consider defining certain new space services and allocations to these services in frequency bands above 20 GHz.

3. The *NOI* requested comment on the above topics. It specifically requested comment on the projected frequency needs of the HF (3-30 MHz) broadcasting service, mobile services in the 500-3000 MHz range, high-quality audio or high definition television (HDTV) delivered by the broadcasting satellite service, and new space services above 20 GHz. In June 1990, the ITU Administrative Council expanded the WARC-92 agenda to include additional issues, such as an allocation for a low-earth orbit (LEO) mobile satellite service (MSS), related to those recommended by the Plenipot. The *Second NOI* made specific proposals for some of the services discussed in the *NOI* and discussed the additional issues addressed by the ITU Administrative Council. The *Supplemental NOI* solicited comment on new proposals and concepts related to satellite and terrestrial high quality audio or digital audio broadcasting (DAB); MSS (including LEO MSS); future public land mobile telecommunications systems (FPLMTS); space research; inter-satellite service (ISS) and HDTV; to complement the information previously obtained.

4. The remainder of the *Report* discusses the Commission's specific recommendations for the topics to be addressed by WARC-92. Our recommended proposals to amend the international Radio Regulations are set forth in Appendix A.

ALLOCATION ISSUES BETWEEN 3 AND 30 MHZ (HF SPECTRUM)

5. In the *Second NOI*, we proposed to reallocate 1325 kilohertz from the fixed and mobile services to the broadcast service due to severe congestion in the existing HF broadcast bands.[4] A consequential reallocation was proposed in the 7 MHz band to correct an incompatible allocation between the amateur and broadcast services. In addition, to improve spectrum efficiency while taking into account current technology, we proposed: 1) that use of the new broadcast bands be limited to reduced carrier single-sideband (RSSB) emissions in accordance with RR Appendix 45;[5] 2) that the new bands not become available for broadcast use for a period of 15 years to give affected fixed and mobile stations a reasonable amount of time to be reaccommodated in the remaining bands; and, 3) that the fixed and mobile services retain access to the reallocated bands on a secondary basis in order to lessen the impact upon them. The *Second NOI* also proposed that the date for conversion to RSSB for the existing HF broadcast bands be advanced to the same date that the new broadcast bands would become available.

Projected HF Broadcast Spectrum Needs

6. The Industry Advisory Committee's Informal Working Group 1 (IWG-1) is generally supportive of the proposals contained in the *Second NOI* but asserts that even more spectrum is justified and necessary. It reiterates its original spectrum proposals which call for an additional 1130 kilohertz beyond that proposed in the *Second NOI*. It notes that responses to the *NOI* requesting a total of 1500 kilohertz represented an "average shortfall" rather than "peak loading. "Its proposal is based on peak loading and emphasizes the particular need for additional spectrum below 9 MHz. It restates its previous proposals along with its rationale for additions to the 4, 6, 7, 9, 11, 12, and 13 MHz bands as shown in Appendix C to the *Second NOI*.[6] It also supports the consequential changes proposed in the *Second NOI* at 7 MHz with the amateur service.

7. The broadcasting community generally supports the IWG-1 proposals. Family Radio Network proposes that at a minimum an additional 50 kilohertz (5850-5900 kHz) be added to the 6 MHz band because broadcasters are already operating in this portion of the spectrum, creating a *de facto* broadcast allocation, and supports the IWG-1 proposals for the 7, 9, and 11 MHz bands. George Jacobs states that, according to the National Telecommunications and Information Administration (NTIA) report *Spectrum Required for HF Broadcasting*, a minimum of 3250 kilohertz is needed below 11975 kHz to accommodate present level broadcast requirements based on RSSB and a Radio Frequency (RF) protection ratio of 17 decibels. On the basis of the analysis contained in the NTIA report, he says that the IWG-1 spectrum proposals are reasonable, and he supports them.

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[3] *Supplemental Notice of Inquiry*, GEN Docket No. 89-554, 6 FCC Rcd 1914 (1991).

[4] The total of 1325 kilohertz represents additional allocations of 1125 kilohertz on a worldwide basis as well as an additional allocation of 200 kilohertz at 7200-7400 kHz for Region 2 to match the existing 200 kilohertz broadcast allocation in the 7 MHz band in Regions 1 and 3.

[5] It was proposed to exempt the new broadcast band at 7200-7400 kHz in Region 2 from this limitation because the matching existing 200 kilohertz allocation in Regions 1 and 3 is not so limited.

[6] A footnote to the IWG-1 comments states that the nonbroadcast interests in IWG-1 do not support its proposal to extend the 7 MHz band because of extensive fixed operations in the band.

8. Stanley Leinwoll (Leinwoll) states that the greatest shortfall of HF broadcast spectrum during prime time periods is in the 6, 7, 9, and 11 MHz bands. He proposes an addition of 455 kilohertz for broadcasting over that proposed in the *Second NOI*. Of this amount, 250 kilohertz would come from the amateur service in the 3.5 and 7 MHz bands. He supports the IWG-1 spectrum proposals but sees difficulties in its proposal to use the tropical bands (4750-4995 kHz) because he understands that many tropical administrations have expressed reservations about reallocation and also because of the technical problems in sharing the band with the fixed and mobile services on a primary basis.

9. The American Petroleum Institute (API) and the Utilities Telecommunications Council (UTC) oppose the reallocation of the fixed and mobile bands to the broadcast service because they argue that the reallocation would not leave sufficient spectrum to serve essential industry communications. The Associated Public-Safety Communications Officers (APCO) objects to any proposed reallocations which would require displacement of disaster relief communications operations and specifically objects to proposed reallocation of the 7400-7525 kHz band or any expansion beyond 7525 kHz. UTC opposes the IWG-1 proposal regarding the 7 MHz band but if a choice has to be made, it favors the *Second NOI* proposal in this band. It argues that the nongovernment fixed use in these bands involves safety of life operations which take priority over broadcasting and therefore should not be disrupted.

10. The American Radio Relay League, Inc. (ARRL) does not object to the reallocation of fixed service spectrum to broadcasting provided there is no adverse impact on amateurs. It supports the consequential change proposed in the *Second NOI* at 7 MHz.[7] Concerning Leinwoll's proposal to reallocate portions of amateur bands to broadcasting, ARRL states that they are clearly unacceptable, that they ignore the carefully crafted consensus of the industry and government regarding the 7 MHz realignment, and that they depart considerably from the common view of the rest of the industry, including the broadcasters. It states that the 7 MHz band is the most crowded of the amateur bands and that it, along with the 3.5 MHz band are usually the only bands available for nighttime worldwide voice communications and that the loss of any segment would result in the inability of amateurs to provide reliable international emergency and disaster communications.

11. The proposed reallocation of 1325 kilohertz from the fixed and mobile to the broadcast service contained in the *Second NOI* was carefully crafted to balance the needs of HF broadcasters for additional spectrum against the continuing needs of the HF fixed and mobile community which is being compressed into the remaining bands. We could not agree to additional spectrum for broadcasting to the detriment of the fixed and mobile service. As evidenced by the comments to the *Second NOI*, our proposals have created concern. The broadcast community is concerned because not enough spectrum was proposed, especially below 10 MHz, while the fixed and mobile community is concerned because too much spectrum was proposed, especially at 7 MHz.

12. Since the issuance of the *Second NOI*, we have examined our proposals to see if modifications are warranted. We have continued our discussions with the Executive Branch, which has significant fixed and mobile (both civil and military) as well as broadcast requirements in these bands, and we have had consultations with other administrations. We note that many developing countries still utilize these bands for a substantial amount of their domestic fixed and mobile communications and are expected to oppose any significant reallocation from fixed and mobile to the broadcast service. Consequently, our proposal must take these factors into account in order for it to be viable both domestically and internationally.

13. Some of the bands proposed by the broadcast interests for reallocation have already been compressed and are congested as a result of the reallocation of 850 kilohertz by WARC-79. Any additional reallocation will further compress them, making it more difficult to reaccommodate affected stations. As was discussed in the *Second NOI*, there can be no reallocation without reaccommodation, and there can be no reaccommodation unless there is enough spectrum in the bands remaining. This must be borne in mind when considering additional allocations beyond those proposed in the *Second NOI*.

14. As was noted in the *Second NOI*, WARC-79 failed to make additional allocations in the 6/7 MHz broadcast bands because the adjacent bands were heavily used by the fixed and mobile services. The proponents of additional broadcast spectrum call for 205-275 kilohertz to be added to these bands beyond that proposed in the *Second NOI*. Opponents of additional broadcast spectrum specifically object to changes in the 7 MHz band, but are silent regarding the 6 MHz band. IWG-1 requests that 100 kilohertz (5800-5900 kHz) be added to the *Second NOI* proposal. Additionally, Leinwoll notes that 30 kilohertz (5870-5900 kHz) is currently being used by foreign broadcasters and is therefore a *de facto* reallocation to broadcasting. Through the Executive Branch, the Voice of America (VOA) requests that 60 kilohertz (5840-5900 kHz) be added. Accordingly, we have reexamined the 6 MHz band. However, after consultation with the Executive Branch we have concluded it will not be possible to propose additional allocations for broadcasting. The Executive Branch notes it has critical fixed and mobile operations in the 6 MHz band and it is their opinion that these operations cannot be reaccommodated in the resultant band due to its insufficient size. We therefore reject this proposal.

15. Concerning Leinwoll's proposal to reallocate portions of two amateur bands, we note that there is no support for this from any other commenter, including the broadcast community. We agree with the ARRL regarding the importance of these bands and believe that the impact of the loss of these bands on the amateur community would be severe, greatly limiting their ability to provide reliable international emergency and disaster communications. We therefore reject this proposal.

[7] In a separate comment filed by an amateur, Gregory Mann proposes to expand by 200 kilohertz the proposed realigned amateur band at 7 MHz to 6700-7200 kHz in order to accommodate amateur requirements into the next century. Unlike the Commission's proposed changes at 7 MHz, Mann's proposal is not consequential and, therefore, is outside the WARC-92 agenda. Accordingly, we will consider it no further.

16. After careful consideration of the other spectrum proposals, and in conjunction with the Executive Branch, we have concluded that the spectrum proposals contained in the *Second NOI*, totaling 1325 kilohertz, represent the best compromise possible between the competing interests. We believe that our proposals reallocate as much spectrum as possible to broadcasting while providing sufficient spectrum in each remaining fixed and mobile band to reaccommodate affected stations. We will therefore proceed with our recommended allocation proposals.

Reduced Carrier Single-sideband (RSSB)

17. Regarding conversion to RSSB, IWG-1 proposes that this issue be deferred from WARC-92, which is an allocations conference, to WARC-93, which will focus on HF broadcasting and will be composed of HF broadcast experts. IWG-1 refers to a 1986 study done for the VOA which concluded that there were more than 500 million HF broadcast receivers in the world, excluding North America, and doubts whether they would effectively be replaced within 15 years. As an incentive for the early development of RSSB, IWG-1 reiterates its proposal that a priority be accorded to RSSB stations operating in the new bands as well as in any planning or coordination procedure devised at WARC-93, such that stations using RSSB be accommodated before stations using double-sideband (DSB). It considers this proposal as superior to the conversion of all existing HF broadcast receivers it maintains is proposed in the *Second NOI*. The broadcasting community generally supports the IWG-1 proposals.

18. Bell Communication Research, Inc. (Bellcore) contends that the requirement for broadcasters to use RSSB for the new bands is an appropriate price to pay in exchange for the spectrum gained from other services. AARL argues that it is important for the United States to maintain its commitment that HF broadcasters convert to RSSB at the earliest possible date to convince other countries that the proposed expansion for HF broadcasting is justified and will be used as efficiently as possible.

19. In developing our proposals we recognized that it will not be possible to reallocate to the broadcasting service the total amount of spectrum sought by proponents. Therefore, we looked for ways of minimizing the additional amount necessary through conversion to RSSB while providing some additional allocations for broadcasting. However, broadcasters maintain that because DSB receivers are incompatible with RSSB transmissions and because low-cost receivers compatible with both DSB and RSSB transmission are currently unavailable, there is a need to encourage manufacturers to produce receivers of the latter type, thus opening the way to conversion to RSSB.

20. In the *Second NOI*, the Commission proposed additional spectrum and a two-pronged approach regarding use of and conversion to RSSB. This approach requires that most proposed new broadcast band usage be limited to RSSB (proposed footnotes 521A and 528B) and that the date for conversion to RSSB (Resolution 517) of the existing bands be advanced to the same date that the proposed new bands would become available. The Commission believes that limiting use of the new bands to RSSB will encourage early conversion to RSSB because broadcasters will be required to purchase transmitters capable of RSSB emission or convert existing transmitters to add this capability. We believe that such a limitation will improve the likelihood of the proposed reallocations being approved at WARC-92 and will encourage receiver manufacturers to design and build low-cost RSSB receivers. We therefore see no reason to delete or modify proposed Nos. 521A and 528B. Accordingly we will proceed with these recommended proposals.

21. As was noted in the *Second NOI*, Resolution 517, which was adopted at HFBC-87, considered the life of a receiver to be approximately 10 years. We note that use of RSSB will make existing DSB receivers obsolete, but since our proposal does not require conversion to RSSB for 15 years, we believe that a significant number of receivers will be replaced during that period. Therefore, we reject the broadcaster's argument about the difficulty of adoption and diffusion of a new generation of receivers. Receiver manufacturers may be reluctant to produce large quantities of RSSB receivers as a result of Resolution 517 in its current form; but we believe that the RSSB proposals in the *Second NOI* provide a stronger mandate for early conversion to RSSB while providing a uniform date for conversion with ample time to develop and market RSSB receivers.

22. The proposed date when the new bands will become available is different than the current date in Resolution 517 for the conversion of the existing broadcast bands to RSSB. We believe that it is appropriate for WARC-92 to consider the date for conversion of existing broadcast bands to RSSB in Resolution 517 because the type of modulation affects the number of channels available, which ultimately affects the total amount of spectrum necessary to accommodate a particular service. In our opinion, the best way to accomplish the full conversion to RSSB is to require conversion for all bands to occur at the same time and that this date be the same as when the new bands become available. Therefore we will continue with our recommended proposal that the new bands and the conversion of the old bands (RES 517) be accomplished on June 30, 2007.

Reaccommodation

23. There was no objection among the commenters regarding the necessity for reaccommodation or the procedures in the *Second NOI* proposed Resolution BBB. Aeronautical Radio, Inc. and the Air Transport Association of America (ARINC/ATA) supports the *Second NOI* and IWG-1's spectrum proposals, provided the final transfer date in Resolution BBB is not changed. Bellcore maintains that some degree of reallocation is inevitable and supports the *Second NOI* proposals provided that the reaccommodation procedures are maintained. IWG-1 notes that it recommended 5 years in its interim report, and asserts that reaccommodation could be accomplished in considerably less time than the 15 years proposed in the *Second NOI*. IWG-1 states that in order to have the U.S. proposals adopted on a worldwide basis, a period greater than 5 years is probably necessary and recommends 7 to 10 years.

24. Since there was no objection to the reaccommodation procedures contained in proposed Resolution BBB and the footnotes 521B, 525A, 528A, and

528C, we will continue to recommend them.[8] As to the final date for conversion, it may be possible in some bands to reaccommodate affected stations in a period less than 15 years. However, we believe it is essential to provide adequate time thereby minimizing the impact on stations being reaccommodated. Therefore, we believe that our 15 year proposal is reasonable and note that it fits nicely into the package for conversion to RSSB.

Sharing

25. There was no disagreement among the commenters that sharing with broadcasting would be difficult. There was also no disagreement with the Commission proposal in the *Second NOI* to allow non-broadcast services to retain regulatory access to the reallocated bands as proposed in footnote 521C. IWG-1 raises a question as to the meaning of "technical constraints" in 521C, and it questions whether the intent is to place technical constraints into a world plan that may be developed at a future HF broadcast WARC. To avoid confusion it recommends that the footnote either be deleted or be clarified as to its intended meaning.

26. The intent of footnote 521C was to guarantee nonbroadcast services the right to regulatory access to the reallocated bands without adversely impacting the broadcasting service. There was no intent to constrain any world broadcast plan which may be developed in the future. Rather, we wish to place broadcasters on notice that there are others who desire access to the bands on a non-interference basis and request broadcasters to reduce their potential for interference, wherever possible, through the use of "technical constraints" such as minimum power and directional antennas. We believe that it is not necessary to modify 521A to clarify our intent, but it is appropriate to add a clarifying sentence to explain the reason for the footnote.[9]

ALLOCATION ISSUES BETWEEN 100 AND 3000 MHZ

Terrestrial Aeronautical Public Correspondence (APC)

27. In the *Second NOI*, we indicated that Recommendation 408 (MOB-87) notes the bands 1593-1594 MHz and 1625.5-1626.5 MHz have been allocated to the aeronautical mobile service to provide initial allocations for pre-operational and experimental APC systems. We also noted the MOB-87 decision to allocate these bands worldwide to this service in accordance with RR 731A, 731B, 731C, and 731D. We observed that under this agenda item administrations will seek to upgrade this service and seek additional spectrum. We stated that the Commission has allocated four megahertz of spectrum at 849-851/894-896 MHz for terrestrial air-ground public correspondence service to meet United States domestic needs and that based on this domestic decision and the MOB-87 decisions at 1593-1594/1625.5-1626.5 MHz, we did not believe additional allocations need to be made on a worldwide basis.

28. There were a few comments to the *Second NOI* supporting the view that a single worldwide allocation for APC may have merit. However, these comments also express the view that the needs for aeronautical MSS communications should have priority over terrestrial APC. Consequently, they recommend that no additional spectrum be allocated for APC to this service in the 1500 MHz (L-Band) range. We note that there is no intention of implementing L-Band for this service in the U.S.

29. Since there is agreement with our position, we will continue to recommend that no additional spectrum in L-Band be allocated for terrestrial APC. However, consistent with the WARC agenda item on this issue we believe it is appropriate to propose worldwide allocation of the bands used in the United States for a terrestrial APC service. The WARC-92 agenda item states that an allocation may be proposed "in the approximate range 1-3 GHz." We believe our domestic allocation is in the approximate range and consider that ITU recognition of this usage would be consistent with the intent of the agenda. We therefore are proposing a footnote (ADD 704B) to designate the 849-851/894-896 MHz bands for worldwide terrestrial aeronautical public correspondence on a primary basis.

Future Public Land Mobile Telecommunications System (FPLMTS) and Related Services

30. The *Second NOI* proposes no exclusive worldwide mobile allocations specifically to satisfy personal communications systems or FPLMTS requirements. The *Second NOI* recognizes that Region 2 has primary mobile allocations between 1710-2500 MHz that provide sufficient flexibility to allow the Commission to implement spectrum for these services as necessary. In the *Supplemental NOI*, we noted the CCIR JIWP WARC-92 Report (JIWP Report) identifying the need for 60 megahertz of spectrum to be allocated on a worldwide exclusive basis for international roaming of personal stations. Although we were not convinced that an exclusive worldwide mobile service allocation is necessary, we nevertheless solicited comments on the issue. If commenters believed this allocation was necessary, we asked that the specific frequency band be identified along with the minimum amount of spectrum needed and the rationale for the allocation. If commenters believed an exclusive worldwide allocation was not necessary, we asked how the desired worldwide compatibility could be achieved. Finally, we solicited comments on the need for a common worldwide allocation for international roaming of personal computer stations.

31. The majority of comments to the *Second NOI* and the *Supplemental NOI* support the Commission's position not to provide exclusive worldwide mobile service allocations, but rather to maintain the co-primary shared allocations for the mobile service in Region 2 in the 1700-2500 MHz band. Comments from existing users express the views: a) that it is economically infeasible to relocate their operations to other frequency bands; b) that there are no suitable alternatives to this fixed microwave use of the spectrum to satisfy their needs; and, c) that fiber optic cable could not satisfy their requirement because of the remote nature of the transmitter sites. Opponents of both personal communications services (PCS) and wireless local area networks (LANs) argue that an exclusive worldwide allocation in the 1700-2500 MHz band is not

[8] We will make an editorial change to footnote 528A by adding "In Region 2" to the beginning of the sentence since the band in question is allocated to the amateur service only in Region 2.

[9] We are also making editorial changes to clarify some of the reasons for other proposals.

necessary because such an allocation would not ensure compatibility. They indicate that worldwide compatibility can be achieved without an exclusive mobile allocation through equipment that can be produced to operate in somewhat different allocations in different geographical areas. They state that FPLMTS users who would "roam" worldwide is a small subset of the total population and that the 60 megahertz of spectrum identified by the JIWP Report is therefore excessive. Similarly, opponents of wireless LANs contend that there is little or no need to provide for the worldwide roaming of personal computer stations.

32. A few parties take exception to the above analysis. They propose that the 1990-2000 MHz band be used as a worldwide common mobile allocation to support a variety of technologies and functions, so as to take full advantage of the productivity benefits of PCS and satellite communications. Motorola, Inc. (Motorola) proposes to pair the 1990-2000 MHz band with another 10 megahertz band (not identified) as an initial phase-in of the overall 60 megahertz envisioned for FPLMTS. Motorola believes that the 1990-2025 MHz band should be the ultimate home for FPLMTS. Apple Computer (Apple) proposes an exclusive 40 megahertz allocation for Data PCS as the minimum bandwidth to support short range data-intensive connectivity and to promote compatible standards. Apple recommends an exclusive 10 megahertz allocation for global worldwide roaming for both voice and data in the 1850-1990 MHz or 1990-2000 MHz band. International Business Machines Corporation (IBM) recommends that the Commission carefully analyze the various developing technologies before determining which frequencies should be allocated to wireless LANs. IBM advocates different bands for wireless LANs and PCS because it believes that the two services cannot co-exist in the same spectrum. Communications Satellite Corporation (Comsat) envisions MSS within the FPLMTS and supports a strategy for a 10 megahertz minimum allocation for worldwide roaming. Comsat also supports the Motorola proposal for 10 megahertz at 1990-2000 MHz if the 1850-1990 co-primary allocations for MSS, mobile, and fixed services are extended to this band.

33. We are not persuaded that a common worldwide exclusive allocation is required to implement either FPLMTS, PCS, or wireless LAN technologies and services. An allocation is only one factor that may affect the development of international compatibility standards to permit international roaming of both PCS and wireless LAN services. Most of the U.S. FPLMTS and wireless LAN user community will need to operate only domestically. The international compatibility standards that will permit the worldwide roaming of this equipment still need to be developed. We also note that other services that have common allocations did not develop common standards to permit roaming or common manufacturing. Nonetheless, many of these services have developed quite well. Therefore, we will proceed with our recommendation that no exclusive worldwide allocation be proposed for FPLMTS, PCS, or wireless LAN technologies and services.

Space Services at 2 GHz

34. In the *Second NOI*, we requested comments on the National Aeronautics and Space Administration (NASA) proposal to upgrade to primary status within the international Table of Frequency Allocations the space research, space operations, and Earth exploration satellite services in the Earth-to-space and space-to-space direction in the bands 2025-2110 MHz. A similar allocation was proposed for the 2200-2290 MHz for the space-to-Earth and space-to-space directions. These proposals are intended to eliminate the coordination difficulties that currently exist internationally using the RR Article 14 procedures, and NASA has indicated that the domestic regulations that currently exist would not be changed. We also requested comments on the sharing criteria that would be needed to make the necessary consequential changes to RR Article 27 and Appendix 28.

35. There were limited comments to the *Second NOI* on these issues. National Association of Broadcasters (NAB) notes that the 2 GHz band is heavily used by TV broadcasters for studio-to-transmitter links, intercity relay links, and mobile electronic new gathering. It asserts that the technical integrity of these services must be protected, that any increased use by NASA must be strictly regulated and controlled, and that footnote U.S. 219 must be maintained. The National Academy of Sciences--National Research Council's Committee on Radio Frequencies (CORF) strongly supports the upgrading of these three space services in the 2025-2110/2200-2290 MHz bands as proposed by NASA.

36. Since there was no objection to the specific proposals to upgrade the three space services in the 2025-2110/2200-2290 MHz bands, we will proceed to propose these allocations. Similarly, we propose to amend RR Article 27 and Appendix 28 to provide the necessary sharing criteria to support co-primary allocations with existing terrestrial services in these bands. We are retaining the existing domestic regulations to protect the terrestrial services at 2025-2110 MHz.[10] Our proposal for Article 27 is to add 2025-2110 MHz and 2200-2290 MHz to RR 2509 to place equivalent isotropic radiated power (EIRP) limits on terrestrial services operating in these bands. Since the U.S. private sector systems already comply with these provisions as stipulated by the requirements of sections 74.636, 74.641 and 74.644 of the Commission's Rules, there will not be any impact on our terrestrial operations.

37. The *Supplemental NOI* proposed to remove the Article 14 provisions as they apply to the 2110-2120 MHz band for the space research (deep space) Earth-to-space allocation. Our proposal is to upgrade this allocation to primary status in the international Table of Frequency Allocations. We stated that the domestic regulations governing this service in the United States would not be changed.[11] We solicited comments on this proposal and its effect on existing users and on the ability of the space research (deep space) Earth-to-space service to share with the MSS (space-to-Earth) service as proposed in the *Supplemental NOI*.

[10] Besides Article 28, RR 2557 through 2560, U.S. footnotes 90, 111, 219, and 222 will be applied to these services operating at 2025-2110 MHz.

[11] U.S. footnote 252 limits operations in the space research (deep space) service to Goldstone, California and requires coordination with terrestrial facilities operating in the geographic area.

38. Very few comments address the issue of sharing with terrestrial services and none of the comments object to sharing MSS (space-to-Earth) with the space research (deep space) (Earth-to-space) service. The limited comments expressed the view that the MSS (space-to-Earth) and space research (deep space) (Earth-to-space) services are compatible. We agree with these comments. Further, since the space research (deep space) Earth-to-space service will continue to comply with domestic coordination procedures and regulations, we believe that space research (deep space) can share with terrestrial services operating at 2110-2120 MHz. Therefore, we will propose a co-primary space research allocation in this band.

Radiodetermination-Satellite Service and Other Services in Shared Bands

39. In the *Second NOI*, we proposed to upgrade the radiodetermination-satellite service (RDSS) in the 1610-1626.5 MHz band (Earth-to-space) and 2483.5-2500 MHz band (space-to-Earth) to a primary allocation in Regions 1 and 3, as a consequential amendment to our proposal to add MSS in these two frequency bands on a primary basis in all three Regions. We also proposed as consequential amendments to suppress RR Nos. 733E, 733F, and 753C. We discussed the fact that the United States and the Soviet Union are investigating the possibility of using the U.S. global positioning system (GPS) and the U.S.S.R. global navigation system (GLONASS) in a compatible manner in the 1600 MHz range for future air navigation service, and that the Executive Branch is concerned about potential interference to these systems from MSS at 1610-1626.5 MHz.

40. Commenters express some concern regarding our proposals to permit use of the 1610-1626.5/2483.5-2500 MHz bands for RDSS and MSS, particularly at 1610-1626.5 MHz. CORF is especially concerned about potential interference to the radioastronomy service, which operates on a secondary basis in the 1610.6-1613.8 MHz band. The Commission is convinced, however, that sharing among RDSS, MSS, and radioastronomy is possible and that the needs of all of these services can be satisfied. In order to achieve compatibility, it will be necessary for licensees in all three services to coordinate closely with one another and that compatible characteristics for MSS and RDSS be developed.

41. Regarding potential interference to the GPS and GLONASS, the Commission notes that the GLONASS is already in operation, but that the Commission has been unable to determine the extent of these operations above 1610 MHz. Therefore, we have not been able to assess the potential for interference to GLONASS in the 1610-1626.5 MHz range. However, if it is determined that GLONASS is operating extensively above 1610 MHz, the U.S. Delegation will have the flexibility to modify the U.S. proposal to protect GLONASS. With regard to GPS, the system does not operate above 1610 MHz; therefore, no interference will occur.

42. Consequently, we are affirming our proposals to add MSS and RDSS to the 1610-1626.5 MHz band (Earth-to-space) and the 2483.5-2500 MHz band (space-to-Earth) on a primary basis in all three Regions. We are also proposing to upgrade the radioastronomy service at 1610.6-1613.8 MHz from secondary to primary status in all three Regions to ensure that this service is placed on equal footing with other primary services, thereby assuring that the coordination required to avoid interference will take place. To effect these changes, we are proposing to add footnote 733Z to permit MSS to be introduced in these bands in accordance with CCIR Recommendations to ensure compatibility with RDSS and are proposing to modify footnote 734 to change the radioastronomy allocation from secondary to primary in all three Regions. These proposals obviate the need for footnotes 733E and 733F, which can be suppressed as a consequence.

Low-Earth Orbit Satellites (LEO) Mobile Satellite Service (MSS) Below 1 GHz

43. In the *Second NOI*, the Commission proposed that the bands 420-421 MHz and 930-931 MHz be used for LEO satellites in the MSS on a primary basis, with the former band to be used as the downlink (space-to-Earth) and the latter band to be used as the uplink (Earth-to-space). The *Second NOI* also proposed using the 137-138 MHz and 148-149.9 MHz bands for LEO MSS on a secondary basis.

44. Starsys, Inc. (Starsys) recommends that the Commission propose five megahertz in the 137-500 MHz band to LEO MSS. Starsys states that the 137-138/148-149.9 MHz bands should be made available on a co-primary basis, and that an additional two megahertz should be made available from the 173.4-174 MHz, 400.15-401 MHz, or 420-421 MHz bands on a primary or co-primary basis. Starsys attaches the "Second Interim Report of Ad Hoc Group A of IWG-2" to support its contention that the 137-138/148-149.9 MHz bands can be shared by existing users and LEO MSS on a co-primary basis, and that the 173-174/400.15-401 MHz bands are relatively lightly-used.

45. Ford Motor Company's Electronic Division, Orbital Communications Corporation (ORBCOMM), and Volunteers in Technical Assistance, Inc. (VITA) agree that the 137-138/148-149.9 MHz bands should be allocated for LEO MSS on a primary or co-primary basis, rather than secondary. ORBCOMM also recommends that the direction indicators at 420-421/930-931 MHz be reversed, with the 420-421 MHz band becoming the uplink and the 930-931 MHz band becoming the downlink. ORBCOMM further suggests that the 173 MHz band be considered for LEO MSS use, and VITA suggests a co-equal primary LEO MSS allocation at 400.15-401 MHz. VITA maintains that LEO communications systems will be most efficient and economical if operated in bands below 500 MHz, due to the operators' ability to employ very simple antenna systems and low-cost electronics for both space and ground segments.

46. As a related matter, NASA proposes that the existing space research service allocation in the 400.15-401.0 MHz band be modified to allow that service to be used in the space-to-space direction. This would provide a communications link with manned space vehicles during docking maneuvers. NASA states this additional use is compatible with LEO MSS use.

47. The Radio Amateur Satellite Corporation (AMSAT) opposes use of the 420-421 MHz band for LEO MSS, due to concern that such use would preclude secondary use of the band by radio amateurs. AMSAT contends that loss of the 420-421 MHz band would result in overly intensive use of the 435-438 MHz amateur-satellite band by terres-

trial amateurs. ARRL concurs, stating that LEO MSS should not be allocated in the 420-421 MHz band on an exclusive basis.[12]

48. Motorola and Telocator oppose LEO MSS use of the 930-931 MHz band, which is currently reserved for advanced paging services. Motorola maintains that all currently allocated bands below 1 GHz are needed for land mobile services. Telocator contends that LEO MSS use of the band would be inefficient and have a chilling effect on the needed expansion of paging services. It argues that there is a shortage of paging spectrum that will curtail future expansion and limit deployment of new paging services that require increased information transmission.

49. In light of the comments to the *Second NOI*, we believe that our proposal in the *Second NOI* to use the 420-421 MHz and 930-931 MHz bands on a primary basis for LEO MSS would negatively impact existing users of the bands. Additionally, we note that use of the 173.4-174 MHz band for LEO MSS would adversely impact existing Executive Branch fixed and mobile operations. We concur with the commenters that the 137-138/148-149.9 MHz bands can be shared between LEO MSS and other users, and that the 400.15-401 MHz band is relatively lightly-used and can accommodate additional users. We are, therefore, recommending that these bands be allocated on a primary basis for LEO MSS with the exception of 150 kilohertz near each band edge of the 137-138 MHz band, which will be proposed on a secondary basis to the meteorological-satellite service. Additionally, we will propose a footnote to allocate the space research service (space-to-space) in the 400.15-401 MHz band, as requested by NASA.

LEO MSS Above 1 GHz

50. In the *Supplemental NOI*, the Commission proposed that, in addition to the primary MSS allocations in the 1610-1626.5 MHz (Earth-to-space) and 2483.5-2500 MHz (space-to-Earth) bands, the 1613.8-1626.5 MHz band be used for MSS (space-to-Earth) on a secondary basis, subject to further studies demonstrating that sharing with other services operating in the band is feasible. The *Supplemental NOI* further proposed to add a footnote to allocate the 1850-1990 MHz band to MSS without a direction indicator, subject to additional studies to demonstrate that sharing with existing fixed and mobile operations in these bands is feasible.

51. Commenters express concern that the proposed MSS bi-directional use of 1613.8-1626.5 MHz would not be compatible with existing services, in particular, with the radionavigation-satellite service. Commenters are not convinced that the sharing studies demonstrate that this MSS use could operate without causing interference. However, Motorola argues that a bi-directional MSS would, in fact, be compatible and requests that the proposed footnote allocation be raised to a primary status.

52. The majority of commenters also oppose the proposed MSS allocation at 1850-1990 MHz. APCO, for example, states that the proposal is premature, contending that no sharing studies have been performed demonstrating that there will be no harmful interference to public safety microwave facilities from MSS users. API maintains that the band is used for critical petroleum and natural gas telecommunications operations that could be endangered, and that sharing with existing terrestrial operations in the band is not practical.

53. Union Pacific Railroad Company opposes MSS use of the 1850-1990 MHz band because it contends that it would have to vacate many channels in this band at a cost of about $110 million. Similarly, the American Association of State Highway and Transportation Officials Special Committee on Communications states that its major investment in the 2 GHz band could be jeopardized by satellite use of this band.

54. Cylink Corporation (Cylink) contends that the Commission's LEO MSS proposal at 1850-1990 MHz obscures its intentions regarding a spectrum allocation for PCS in the United States and has a chilling effect on current experimental PCS activity in the band. Cylink says that its PCS proposal is based on sharing the 1850-1990 MHz band with fixed microwave users, and that this sharing approach could be upset by LEO MSS use of the band.

55. Motorola recommends that the United States confine its MSS proposal to the 1900-1990 MHz band. According to Motorola, only a portion of the 1900-1990 MHz band will be needed as co-primary MSS, and so there is no need to designate the entire 1850-1990 MHz band for MSS.

56. American Mobile Satellite Corporation (AMSC) proposes that MSS operations in the 1850-1990 MHz band be confined to 1850-1885 MHz and 1955-1990 MHz with direction indicators. AMSC contends that the 1850-1885 MHz band should be designated as an uplink and the 1955-1990 MHz band should be designated as a downlink, so as to permit MSS systems that use uplinks and downlinks in separate bands to operate without interfering with one another in accordance with existing RR Article 11 procedures. In AMSC's views, an LEO MSS system such as proposed by Motorola is speculative and would detract from ongoing U.S. efforts to secure substantial allocations for new MSS systems using proven technologies.

57. Regarding our proposal at 1613.8-1626.5 MHz, the Commission believes that, although it may be possible to design and implement a bi-directional MSS in this band that would be compatible with existing services, further consideration of the parameters for sharing may be appropriate. Therefore, we will proceed with our proposal to allocate the 1613.8-1626.5 MHz band to MSS (space-to-Earth) on a secondary basis. With respect to our other proposal to allocate on a co-primary basis the 1850-1990 MHz band to MSS without a direction indicator, we believe this proposal is viable. While we recognize the concerns expressed by existing users of the band regarding potential interference from MSS systems, we believe that careful engineering may permit the implementation of MSS on a compatible basis.[13] Further, this proposal will provide flexibility in the international Table of Frequency Allocations to allow the Commission to make future decisions on the use of this band in the public interest. We will bear in mind the need of the fixed service in this

[12] The Executive Branch also opposes LEO MSS use of the 420-421 MHz band because of the adverse effect on radiolocation operations in that band.

[13] Although specific sharing criteria has not been developed, the ITU procedures regarding implementation of LEO MSS systems will be pursued. *See* paras. 68 and 69, *infra*.

band when the related sharing criteria are discussed. Regarding AMSC's concerns about the necessity of allocation of spectrum in the 1850-1990 MHz band to GSO, rather than LEO, MSS systems, we believe that we have already provided adequately for GSO MSS in other bands. Additionally, we note that our proposed allocation footnote allows the implementation of either a GSO or LEO MSS system.

Geostationary Satellite Orbit (GSO) MSS

58. In the *Second NOI*, we proposed to pursue the generic MSS allocations at 1530-1559/1626.5-1660.5 MHz proposed at MOB-87. We further proposed to allocate an additional five megahertz for MSS at 1525-1530 MHz in the space-to-Earth direction to match the current Earth-to-space allocation at 1626.5-1631.5 MHz. We stated that this latter allocation would be an extension of our generic MSS proposals and that the spectrum would be shared with the space operation service on a co-equal primary basis worldwide. In the *Supplemental NOI*, we identified an additional 40 megahertz of spectrum for GSO MSS in each direction to satisfy most of the minimum MSS spectrum requirements. Specifically, we proposed the bands 2110-2130/2160-2180 MHz for MSS (space-to-Earth) on a co-primary basis with existing services and the 2410-2450 MHz band for MSS (Earth-to-space) on a primary basis, with other radio services being reduced to secondary allocations.

59. Commenting parties express mixed reactions to these proposals. Motorola essentially agrees with the *Second NOI* proposals, stating that proposed MSS allocations should be generic in nature and allow for bi-directional transmissions. According to Motorola, generic MSS allocations will permit LEO systems to operate in existing MSS allocations without causing interference to GSO systems.

60. Comsat agrees with the Commission's 1525-1530 MHz proposal but disagrees with the proposed generic MSS allocation plan at 1530-1559/1626.5-1660.5 MHz. Comsat contends that any Commission proposals to change existing maritime or aeronautical MSS allocations should be adopted only after a comprehensive technical analysis. Comsat also expresses concern that any action the Commission may take regarding generic allocations could prejudge the outcome of the rule making in GEN Docket No. 90-56.

61. ARINC/ATA also disagrees with the Commission's generic MSS allocation plan at 1530-1559/1626.5-1660.5 MHz, asserting that the current international allocations to aeronautical, land, and maritime MSS should be retained. According to ARINC/ATA, the generic plan would frustrate the ability of the aviation community to employ a common allocation worldwide.

62. Aerospace & Flight Test Radio Coordinating Council (AFTRCC) argues that the 1525-1530 MHz band should not be authorized for MSS, since it could adversely impact existing aeronautical telemetry operations. In AFTRCC's view, additional MSS requirements can be satisfied in the 2390-2420 MHz band.

63. Southwestern Bell Corporation (Southwestern Bell) asserts that the Commission should reconsider its 2110-2130/2160-2180 GSO MSS proposal, since it would have a substantial adverse impact on existing point-to-point microwave users. Pacific Bell and Nevada Bell (Pacific Companies) concur, contending that these bands are particularly important in rural areas, where long transmission path lengths are present.

64. ARRL states that, while additional sharing at 2410-2450 MHz would limit future amateur use of the band, it appears possible for MSS to operate in the Earth-to-space direction without serious impact on existing amateur operations. However, ARRL recommends that, should the Commission propose this allocation, the amateur and amateur-satellite services be compensated for the reduced utility of their spectrum by upgrading the amateur allocations in other bands in this frequency range from secondary to primary.

65. Manufacturers of Industrial, Scientific, and Medical (ISM) equipment express strong objections to use of the 2410-2450 MHz band for MSS, contending that major interference could result from existing ISM equipment at 2400-2500 MHz to MSS systems. ISM manufacturers recommend that no MSS use be permitted in the 2400-2500 MHz range. Other commenters indicate that the proposed MSS allocation should be moved down at least 20 megahertz from the ISM center frequency of 2450 MHz to eliminate interference from ISM equipment.

66. The Commission believes that the proposals for GSO MSS set forth in the *Second NOI* and *Supplemental NOI* are generally appropriate. The spiraling demand for GSO MSS makes it imperative that the Commission maximize spectrum efficiency in mobile satellite allocations. We do not believe that separate allocations for aeronautical, land, and maritime MSS can obtain the degree of efficiency necessary to meet the growing demand in the available spectrum. By providing priority access for maritime safety and distress communications and priority and real time preemption for AMSS(R), we believe that we can take adequate account of critical safety needs. Additionally, we believe that with respect to our MSS proposals at 2100 MHz, careful engineering can permit implementation of MSS on a compatible basis.[14] Further, this proposal will provide the flexibility in the International Table of Frequency Allocations to allow the Commission to make future decisions on the use of these bands in the public interest.[15] Finally, we reject the ARRL request to upgrade the amateur and amateur-satellite allocations. These services are compatible with other existing services and can continue to meet their requirements without a change in allocation status.

67. We are, therefore, affirming our MSS proposals for the 1525-1530 MHz, 1530-1559/1626.5-1660.5 MHz, and 2110-2130/ 2160-2180 MHz bands. With respect to our MSS proposal at 2410-2450 MHz, we believe that a relocation to 2390-2430 MHz will minimize potential interference from ISM equipment centered at 2450 MHz. While we still have some concerns about interference from ISM equipment, we believe the fact that the MSS transmissions will be in the Earth-to-space direction ren-

[14] We believe power flux density limits similar to those existing in other fixed microwave bands will permit implementation of the MSS.

[15] We noted in the *Supplemental NOI* that higher microwave bands are being vacated and it may be desirable to reaccommodate users of the 2100 MHz band if MSS is implemented. *See* para. 16.

der the possibility of harmful interference unlikely. Accordingly, we are also proposing that the 2390-2430 MHz band be allocated to MSS on a primary basis.

ITU Procedural Aspects of LEO and GSO MSS Proposals

68. In the *Supplemental NOI*, the Commission raised concerns about the coordination of LEO and GSO MSS systems. Under the ITU Constitution, Convention and Radio Regulations, all stations, whatever their purpose, must be established and operated in such a manner as not to cause harmful interference to the radio services or communications of other ITU members operating in accordance with the Radio Regulations including the international Table of Frequency Allocations. The Commission is advancing proposals to allocate spectrum to the MSS on a co-equal basis with existing terrestrial services. Space stations in the MSS may pass within propagation range of most, if not all, terrestrial stations operating on and near the surface of the Earth. Accordingly, some procedural or other protection may be required before a majority of ITU members accede to the proposed allocations.

69. The Commission believes that a proposal to allocate spectrum to MSS on a co-equal primary basis with existing terrestrial services would not be viable in the absence of provisions that would be acceptable to a majority of ITU members as ensuring adequate safeguards for terrestrial services. Therefore, in an effort to secure our proposed primary allocations, we intend to advance the regulatory and procedural concepts discussed in the *Supplemental NOI* and be prepared to work with other administrations at the Conference to develop the necessary procedures.

Digital Audio Broadcasting (DAB)

70. In the *Second NOI*, the Commission solicited comments on three options for satisfying a requirement for the broadcasting-satellite (sound) service, including the accommodation of complementary terrestrial sound broadcasting within this allocation. (The combined satellite and terrestrial service is hereinafter referred to as digital audio broadcasting, or DAB). These options are: 1) allocation of the 728-788 MHz band on a shared basis with UHF television; 2) allocation of the 1493-1525 MHz band; and 3) allocation of the 2390-2450 MHz band. In the *Supplemental NOI*, we noted that the requirements of advanced television diminish the feasibility of Option 1, that the Executive Branch objects to Option 2 because of the adverse effect on aeronautical mobile test and telemetry operations, and that the Executive Branch suggests a modification to Option 3. We therefore solicited comments on the Executive Branch's proposal (Option 4), which would allocate the 2360-2410 MHz band to DAB.

71. Comments were mainly negative on all four options. However, broadcasters strongly oppose Option 1 and support Option 2 as being clearly superior to the other two options. In contrast, the Executive Branch objects to Option 2 because some aeronautical telemetry users would be relocated into the 2400-2500 MHz Industrial, Scientific, and Medical (ISM) band. Manufacturers of ISM equipment object to Options 2 and 3 because implementation of these options would mean that the ISM band would have to be reduced to 2420-2480 MHz. ISM manufacturers contend that such a bandwidth reduction would create a severe economic burden on them, and could also result in existing ISM equipment interfering for many years with other services attempting to use the 2400-2420/ 2480-2500 MHz bands. Further, ISM manufacturers express doubt that Option 4, which would require that ISM equipment and DAB share the 2400-2410 MHz band, would permit DAB to operate on an interference-free basis.

72. Amateur radio interests and spread spectrum equipment manufacturers also object to Options 3 and 4, owing to concern about adverse impact on the future development of the amateur-satellite service in the 2400 MHz range and impact on Part 15 spread spectrum systems operating in the 2400-2483.5 MHz band, respectively. Amateur radio interests further state that Option 4 would impose sharing problems with the amateur-satellite service, but that if the upper frequency limit were moved from 2410 MHz to 2400 MHz, this option might be feasible.

73. The Commission believes that Option 1 is not viable because of the difficulty of DAB sharing with UHF television, and that Options 3 and 4 are not viable because of the likelihood of interference to DAB from ISM equipment. Option 2 not only was most favored by broadcasters, it has also received the greatest support within Region 2.[16] We are convinced that, in order to promote development of DAB, including availability of inexpensive receivers, it will be desirable to select a band which has the broadest regional and international support. Although we are not proposing Option 2 as discussed in the *Second NOI*, for the reasons indicated we consider it to be important to allocate some spectrum for DAB from within the band 1429-1525 MHz.

74. We note that allocating some spectrum for DAB will require relocating some aeronautical mobile telemetry to other bands. We recognize the importance of the aeronautical mobile telemetry service. As we stated in the *Second NOI:* "These flight test, telemetry, and telecommand operations are vital to the U.S. aerospace industry to produce, deliver, and operate safe and efficient aircraft and space vehicles." [17] However, given our understanding about the flexibility of the telemetry equipment, we believe that this relocation is feasible and no degradation to telemetry service would occur. We note that the higher telemetry band at 2.3-2.4 GHz has been available since 1984 and equipment is now becoming available on most test ranges. We also believe that in view of the footnotes that permit telemetry to continue to operate on a primary basis until January 1, 1997, or until DAB systems are brought into use (whichever is later), there would be sufficient time to provide a smooth transition for aeronautical mobile telemetry users. Since it may not be possible to provide enough spectrum in the 1.5 GHz band to ensure a successful DAB service, we also propose an additional allocation, which is a variation of Option 4,

[16] At a recent meeting of the Inter-American Telecommunications Conference (CITEL) PTC-III Preparatory Group on WARC-92, the general tone was supportive of selecting a band in the range around 1500 MHz; at least two countries (Canada and Brazil) specifically indicated their intention to propose allocations in this range for DAB.

[17] *See* para. 101.

to allocate some spectrum from the 2300-2390 MHz band. We will select a portion of the band to ensure that DAB would not be subject to unacceptable interference from ISM equipment. The exact size of the DAB allocation in each band will be decided after appropriate consultations with the Executive Branch.

ALLOCATION ISSUES ABOVE 11 GHz

HDTV-BSS

75. In the *Second NOI*, the Commission explored a number of bands for consideration in providing an allocation for wide-RF band HDTV by satellite. Several of these bands, including an existing allocation for BSS at 23 GHz, were noted as presenting very difficult sharing situations with the existing terrestrial services operating in those bands. In light of these difficulties, we tentatively identified the existing BSS allocation at 12 GHz as our primary focus for meeting the HDTV-BSS requirement. As a backup to this proposal, we also sought comment on using the 17.3-17.7 GHz band as an alternative allocation for HDTV-BSS on a co-primary shared, bi-directional basis with the 12 GHz BSS feederlinks that will be using this band. In the *Supplemental NOI*, we noted that some European countries were examining the possibility of using the 24.25-25.25 GHz for HDTV-BSS. As this band is allocated to the radionavigation service but is not currently in use, we sought comment on proposing it as an additional allocation to meet HDTV-BSS requirements that may not be satisfied in the 12 GHz BSS allocations.

76. Comments to the *Second NOI* generally support the Commission's concerns about sharing an HDTV-BSS allocation in bands already heavily used for terrestrial services. Additionally, a number of commenters note that the feederlinks at 17 GHz for the 12 GHz BSS may employ widespread use of mobile or transportable stations to cover news or sporting events. This use will make it very difficult to share the band with an HDTV-BSS downlink. In light of these problems, there appears to be a consensus to focus on the existing 12 GHz band allocation for HDTV-BSS. With respect to our proposal in the *Supplemental NOI*, there appears to be general support for the additional allocation proposal for HDTV-BSS at 24.65-25.25 GHz. While some commenters still oppose any additional allocations for BSS, none specifically objects to use of this band. Some commenters note that the propagation difficulties and high satellite power requirements of using this band are similar to those associated with use of the current 23 GHz BSS allocation. One commenter suggests that we maintain our earlier suggested proposal of using the 17 GHz band for HDTV-BSS downlinks and also use the 24.65-25.25 GHz band for feederlinks for this service, citing the satellite power requirements needed at 25 GHz as a basis for its proposal.

77. On balance, we are persuaded by the commenters that it would not be advisable to propose an allocation for HDTV-BSS in bands currently utilized by terrestrial services, or to propose bi-directional, shared use of the 17 GHz band. Potential displacement of large numbers of terrestrial users does not appear justified at this time. Additionally, it appears that significant use of mobile or transportable feederlinks at 17 GHz for the 12 GHz BSS is a very real possibility, and sharing with a BSS downlink under those circumstances would be very problematic. Our additional proposal at 24.65-25.25 GHz appears viable and can serve as an alternative allocation to meet HDTV-BSS requirements that may not be satisfied in the 12 GHz BSS allocations. As such, we will proceed with a recommendation that the existing 12 GHz band be the first choice for meeting this requirement and that a new, exclusive allocation for BSS at 24.65-25.25 GHz be proposed as an alternative choice.

Radiolocation-Satellite Service near 25 GHz

78. In the *Second NOI*, the Commission proposed that the radiolocation-satellite service be added to the 24.25-25.25 GHz band on a shared basis with the radionavigation and space research services. Comment was requested on the sharing between the radiolocation-satellite and space research services. No comments or reply comments were filed on this matter. In the *Supplemental NOI*, the Commission modified this proposal to provide a 100 megahertz exclusive allocation in this band to the radiolocation-satellite service. NASA had withdrawn its requirement for a space research allocation in this part of the spectrum, thereby making the sharing consideration moot. Motorola, however, has suggested in comments to the *Supplemental NOI* that the proposal for a radiolocation-satellite service allocation be changed to the fixed-satellite service to be used for feeder links. A requirement has been identified for a radiolocation-satellite service in this part of the spectrum. As the Commission believes that we have provided adequate spectrum for feederlinks elsewhere in our proposals, we shall proceed with a recommendation for an exclusive allocation to the radiolocation-satellite service in the 24.55-24.65 GHz band.

Future Data Relay Satellite and Space Station (Proximity) Wideband Links

79. In the *Second NOI*, the Commission proposed to accommodate certain NASA requirements for wideband space-to-space data links between LEO spacecraft and GSO data relay satellites, and for wideband space-to-space links between permanent space stations and a variety of co-orbiting space vehicles in close proximity. The operations would be accommodated in a new inter-satellite service allocation in the 25.25-27.5 GHz band. There were no comments or reply comments to this proposal. The Commission will, therefore, proceed with a recommendation for a primary inter-satellite service allocation in this band.

Narrowband and Wideband Space Research Links for Manned Exploration of the Moon and Mars, and Other Applications

80. In the *Second NOI*, the Commission proposed to accommodate NASA requirements for wide bandwidth links between the Earth and the Moon and between the Earth and Mars, as well as other space research activities that will require wider bandwidths to operate. We also proposed a minor modification to the definition of the space research service necessitated by a change in the definition of "deep space" by ORB-88. Six specific bands were mentioned in the *Second NOI*, from which we expected to select at least one pair. The only comments on these proposals were from CORF, which favors using wideband data links to support very large baseline interferometry by satellite. NASA has subsequently reduced the list of candidate frequencies to one set--the 37.0-38.0 GHz band for space research (space-to-Earth)

and the 39.5-40.5 GHz band for space research (Earth-to-space). We believe that the bands selected by NASA will have, at most, a minimal impact on the other services sharing the band and we will, therefore, proceed with a recommendation for such an allocation proposal. We shall also support the recommended change in the definition of space research.

Space Research (Deep Space) near 32/34 GHz

81. In the *Second NOI*, the Commission proposed to modify the allocations in the 32/34 GHz range by upgrading the secondary space research service to primary, and restricting the space research use to deep space only. This proposal was initiated at NASA's request and is designed to protect the typically very weak signals from deep space sources. No comments or reply comments were filed on this proposal. We will, therefore, proceed with a recommendation for an allocation for space research (deep space) in the bands 31.8-32.3 GHz and 34.2-34.7 GHz, with appropriate direction indicators.

Fixed-Satellite Service (FSS) Uplink Power Control Beacon

82. In the *Second NOI*, the Commission proposed that a footnote be added to the 27.5-29.5 GHz band that would allow beacon transmissions in the fixed-satellite service (space-to-Earth) to be used for the purpose of controlling uplink power to the satellite. Comsat was the only commenting party to address this proposal and fully supports it. We will, therefore, proceed with a recommendation for a footnote in the 27.5-29.5 GHz band to allow beacon transmissions for the purpose of uplink power control.

New FSS Uplinks

83. In the *Second NOI*, the Commission acknowledged that there is currently an imbalance between uplink and downlink spectrum in the 15 GHz spectrum range: specifically a 500 megahertz shortfall of uplink spectrum in Region 2 and a 250 megahertz shortfall in Regions 1 and 3. We noted that although the 14.5-14.8 GHz band was added to the WARC-92 agenda by the 45th session of the ITU Administrative Council in June 1990 for consideration in meeting this requirement, the U.S. delegation to that meeting opposed the addition of this item to the agenda with the current band limits because the significant current usage in the band precludes its use by the FSS in Europe and the United States. We therefore opposed pursuing this band option for FSS uplinks, while recognizing that a legitimate need exists for additional uplinks.[18] The commenters to the *Second NOI*, while acknowledging the problems at 14.5-14.8 GHz, continue to press the need for additional FSS uplink spectrum, and one commenter supports broadening the agenda for WARC-92 to include consideration of other bands outside the 14.5-14.8 GHz range. However, due to the significant usage at 14.5-14.8 GHz, we believe it is appropriate to maintain our previous position of no change to the existing allocation.

MSS at 11/14 GHz

84. In the *Second NOI*, the Commission noted that the U.S. delegation to the 1990 ITU Administrative Council attempted to add an item to the WARC-92 agenda that would have allowed an upgrade of the MSS allocation at 14.0-14.5 GHz from secondary to primary. That effort failed and we subsequently determined that such a proposal to WARC-92 would be outside the terms of reference of the agenda. We therefore decided not to pursue this proposal. No comments were received regarding this item, and we will therefore maintain our earlier position of not recommending a proposal pursuing this matter at WARC-92.

Earth Exploration-Satellite Service (EES) near 18 GHz

85. In the *Second NOI*, the Commission noted that the U.S. delegation to the 1990 ITU Administrative Council attempted to add an item to the WARC-92 agenda that would have provided for the upgrading of the Earth exploration-satellite service in the 18.6-18.8 GHz to primary status worldwide. That effort failed and we subsequently determined that such a proposal to WARC-92 would be outside the terms of reference of the agenda. We therefore decided not to pursue this proposal. Only one comment was received on this item, which acknowledges that it is outside the terms of reference of WARC-92 and should not be pursued. We will therefore maintain our earlier position of not recommending a proposal pursuing this matter at WARC-92.

MSS/General-Satellite Service near 20/30 GHz

86. In the *Second NOI*, the Commission recognized that there is an increasing tendency to develop and implement space platforms that integrate a wide variety of services. To accommodate this trend, we proposed to upgrade the MSS at 19.7-20.2/29.5-30 GHz from secondary to shared primary status with the fixed-satellite service. We additionally noted that in late filed comments a proposal was made to allocate these 20/30 GHz bands to the "general-satellite service," which could provide for several types of satellite operations in the same frequency band and from the same space platform. Comment was requested on this newly proposed service.

87. Comments were generally supportive of the concept of providing flexibility in the allocations to provide a wide variety of satellite services; however, there were many reservations raised concerning making such an allocation proposal that would allow satellites with widely varying technical characteristics and the spectral efficiency questions those disparities would raise. Particular concern was raised by potential providers of fixed- satellite service who were concerned that parameters of systems providing broadcasting type services might require inordinately large orbital separations between satellites, thereby reducing spectrum efficiency and the total number of systems that the frequency band and orbit could support.

88. The Commission fully appreciates the sharing and spectrum efficiency issues raised by the commenters in this proceeding. We believe, however, that the potential benefits to be derived from a general-satellite service allocation that could meet a wide variety of service needs

[18] In discussions at the 1990 ITU Administrative Council, the U.S. representative agreed to a compromise to allow this item to be added to the WARC-92 agenda item but entered a statement for the record indicating that FSS usage would not be permitted within this band in the United States.

outweighs these concerns. To be sure, when systems are to be implemented in these bands the Commission will have to examine very carefully each application to ensure that both the orbit and the spectrum are being used in an efficient manner to provide services necessary to meet the public interest. Additionally, we will have to work closely with neighboring countries in planning and coordinating our use of these bands. These problems, however, are not insurmountable, and our methods will be typical of those currently used to coordinate the use of FSS and MSS in other bands. The potential problems are many, but the benefits are also substantial. To this end, we will modify our proposal in the *Second NOI* to propose an allocation to the general-satellite service in the 19.7-20.2 GHz and 29.5-30 GHz bands. We will also propose a definition for this new service that will read: general-satellite service: a radiocommunication service using satellites for fixed and mobile applications.

EES near 61 GHz and 157 GHz

89. In the *Second NOI*, the Commission supported a NOAA proposal to provide a primary, exclusive allocation for the Earth exploration-satellite service (passive) in the bands 60.7-60.8 GHz and 156-158 GHz for the purpose of making important scientific measurements of the Earth's surface and atmosphere. CORF provides the only comments on this proposal and fully supports it. The Commission will, therefore, proceed with a proposal for a primary, exclusive Earth exploration-satellite service allocation in the 60.7-60.8 GHz and 156-158 GHz bands.

Inter-Satellite Service

90. In comments to the *Second NOI*, there was support for a recommendation of the IWG-3 of the IAC for inter-satellite service (ISS) allocations at 22.0-22.2 GHz and 31.0-31.3 GHz for links between mobile satellites. There was also concern expressed in the reply comments about possible interference to radioastronomy observations in the 22.01-22.50 GHz band from ISS use.

91. In the *Supplemental NOI*, the Commission noted that very little specific attention had been given to the requirements for inter-satellite links between the various types of mobile-satellites. We noted that several allocations currently exist for ISS at 22.55-23.55 GHz, 32-33 GHz, and several higher bands. We voiced concern, however, about the adequacy of these allocations, both in terms of total spectrum requirements and in terms of sharing between GSO and non-GSO satellite systems. In consideration of the possible interference to radioastronomy, we solicited comment on a new proposal to add ISS to the 21.7-22 GHz band.

92. Comments to the *Supplemental NOI* support the new proposal for an ISS allocation at 21.7-22 GHz. The Commission will therefore recommend a proposal for a primary ISS allocation in this band.

OTHER MATTERS

ARTICLES 55 AND 56

93. With respect to U. S. draft proposals for Radio Regulation Articles 55(Rev.) and 56(Rev.), as contained within the *Second NOI*, regarding requirements for on-board maintenance of shipborne radio and electronic equipment, comments were received from the Radio-Electronics Officers Union (ROU).

94. ROU points out that at MOB-87, the majority of participating ITU members voted to amend these two Articles to require ships that install Global Maritime Distress and Safety System (GMDSS) equipment, to carry one or more on-board maintainers. To be so certified an individual must have a theoretical, general, and practical knowledge of GMDSS radiocommunications equipment.

95. ROU mentions that twenty-three countries, including the United States, took reservations to ITU Articles 55(Rev.) and 56(Rev.) . ROU further mentions that in 1988, the International Maritime Organization (IMO) adopted amendments to the Convention for the Safety of Life at Sea (SOLAS) to permit choice of two of three methods for ensuring the maintenance of radio and electronic equipment aboard vessels, viz., duplication of equipment, shore-side maintenance and at-sea electronic maintenance. (Actually, the IMO maintenance regulations adopted in 1988 are for the purpose of ensuring availability of GMDSS functions, an important difference.)

96. ROU refers to an opinion that the Secretary-General of IMO offered in 1988 and also to a conclusion by the Secretary-General of the ITU that the SOLAS-GMDSS amendments should enable all concerned to implement the GMDSS under the SOLAS Convention as amended. The ITU Secretary-General explained that countries which had taken the reservation could implement the GMDSS without being in conflict or in contradiction with their obligations under the partial revision of the Articles. It was indicated that while the flexibility enjoyed under the SOLAS amendments would be limited by the obligations under the ITU for a country that had not taken a reservation, its obligation to respect the ITU treaty would *not* infringe upon its ability to also comply with the SOLAS. ROU states its view that the changes are proposed because the United States believes that on-board maintenance should not be chosen as one of the options available. Reference is made to the *Second NOI* at paragraph 183.

97. ROU believes that the FCC analysis ignores the preventive maintenance that on-board personnel will perform. ROU concludes that the on-board maintenance option provides a greater margin of safety than duplication of equipment. ROU points out that the utility of shore-side maintenance has inherent limitations because only a few major ports might be sufficiently equipped to provide full maintenance and repair facilities for highly complex GMDSS equipment. GMDSS equipment and spare parts are made by hundreds of suppliers throughout the world. ROU indicates that it is not reasonable or economically feasible to expect--at even major port repair centers--more than a limited supply of spare parts.

98. In its final analysis, ROU states its position that the United States should require the carriage of qualified technicians on board all vessels over 1600 gross tons using GMDSS. In conclusion, ROU requests changes not be recommended by the FCC for the present two ITU Articles, and that the FCC should recommend adherence to them.

99. Reply comments were submitted by the American Institute of Merchant Shipping (AIMS), a national maritime trade association. In summary, AIMS largely

disagrees with ROU and supports the revisions proposed in the *Second Notice* so as to make the two international conventions consistent.

100. AIMS points out that the ITU Articles' requirements apply to vessels in excess of 300 gross tons, characterizing a ship of that size as very small, routinely crewed with a total complement of six to nine persons.

101. AIMS distinguishes between countries represented by telecommunications interests at MOB-87 which voted for Articles 55 and 56, and the countries represented by maritime interests which chose in 1988 a different approach to safety requirements for ships at sea. The point is made that the GMDSS amendments to the Safety of Life at Sea Convention were unanimously adopted to allow a choice of two options from three for ensuring that GMDSS functions were maintained.

102. AIMS believes that U.S. opposition to Articles 55(Rev.) and 56(Rev.) is appropriate because of inherent limitations of mandating a single maintenance option. The available combinations of options (three in all) must be available for use by U.S. vessels, according to AIMS.

103. It is stated by AIMS that the one equipment duplication option is the most attractive in that down-time is minimal. AIMS points out that the basic GMDSS itself is predicated on redundant ability to make distress calls, and that duplication of equipment is just additional redundancy.

104. AIMS believes that shore-based maintenance is a viable option. AIMS indicates that reliable maintenance can be arranged in essentially all ports. AIMS questions how complete knowledge of equipment manufactured from hundreds of suppliers, by a single maintainer aboard ship can equate to essentially a full range of parts, experience, and expertise that can be made available from shore when they may be needed.

105. The position of ROU on the issue of the certificates mandated by Articles 55(Rev.) and 56(Rev.), is made clear in its statement that the United States should require the carriage of qualified technicians on board all vessels over 1600 gross tons using GMDSS. This position is one of concern to us at the moment for two reasons. The SOLAS Convention, which essentially all of the world's maritime community has embraced: 1) established a full, uniform system of safety for all vessels down to 300 gross tons as a matter of basic principle, and (2) our current problem under the WARC-92 agenda, is to define how to approach the certification of on-board maintainers assuming that they will continue as a major component of GMDSS functional maintenance.

106. It is important to clarify the Commission's position on two points. First, the Commission is of the belief that reservations to a treaty are a last resort, are not taken lightly, and are not desirable from the point of view of international comity. Reservations are used only after all other negotiations have failed and it is essential to protect the nation's interests. It is the Commission's view that, given this second chance to address Articles 55 and 56 and their inconsistency with SOLAS, regardless of whether or not nations may operate themselves under limited option choices while adhering to both treaties, good faith efforts should be made to align the diverse requirements so that they are ultimately consistent.

107. Second, the Commission is convinced that, in accordance with the SOLAS Convention, on-board maintenance must be preserved as one of the three options available to ensure maintenance of GMDSS functions. Some patterns of sea trading and some methods of operation by vessels would have a high degree of probability of indicating that on-board maintenance is not only desirable, but necessary.

108. ROU believes that the Commission's analysis ignores the preventive maintenance function that qualified on-board personnel will perform. This is not the case. Preventive maintenance, whether performed on-board, or shore-side at regular intervals, will help reduce the probability of failure of components or systems. Some electronic equipment requires no preventive maintenance and, in fact, some equipment is labeled with instructions not to open certain modules for repair lest damage be caused or the warranty voided. Also, unfortunately, preventive maintenance will not, wherever it is performed--at sea or shore-side--eliminate component, circuit, or system failures.

109. ROU further believes that if a vessel does not carry an on-board maintainer, it is likely that a vessel might have to travel for a substantial period with faulty, malfunctioning equipment before reaching an adequately-equipped port. Should a vessel *not* have an on-board maintainer, it will have duplicated equipment and at least triplication, possibly quadruplication, of the distress calling function. Furthermore, once a vessel arrives at first port, it cannot under the treaty depart until the GMDSS functions are restored, without subjecting the vessel to heavy penalties.

110. Upon due consideration of the comments and reply comments filed in the matter of Articles 55(Rev.) and 56(Rev.), it is believed that the related draft proposals contained in the *Second NOI* are adequate and convey the sense of the U.S. position developed over the last decade, would correct the inconsistency between the two treaties, and if adopted would allow the U.S. to leave the Conference without further reservation.

111. It is realized that there are different ways to achieve the objective of aligning the Radio Regulations with SOLAS. This is expected to occur during the negotiations over the two articles. It would be an FCC objective to honestly and skillfully negotiate changes to the Regulations that will allow unreserved acceptance of the two articles.

112. As a result of the review of comments and reply comments in this Docket, and a restudy of the texts of the pertinent treaties, no changes are made to the draft proposals contained in the *Second NOI*. Incorporated in the draft proposals are the FCC views with regard to Articles 55(Rev.) and 56(Rev.)

Administrative

113. Authority for this *Report* is contained in Sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 303(r), and 403.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Appendix A

UNITED STATES PROPOSALS

for the

WORLD ADMINISTRATIVE RADIO CONFERENCE

(SPAIN, 1992)

WASHINGTON, D.C.

June 1991

METHOD OF PRESENTATION

1. Services shown in all capital letters (*e.g.*, FIXED) in the Allocation Table are services with primary status.

2. Services shown with an initial capital letter and the remaining letters in lower case (*e.g.*, Fixed) in the Allocation Table are services with secondary status.

3. Underlining (*e.g.*, Underline) indicates new text proposed for adoption.

4. Struck out text (*e.g.*, ~~Strikeout~~) indicates existing text proposed for deletion.

5. NOC indicates provisions for which no change is being proposed.

6. NOC indicates matter of special significance, for which it is important that no changes be made to the current provisions.

7. SUP indicates provisions which are proposed for suppression.

8. MOD indicates a proposed modification to the existing text.

9. (MOD) indicates proposed modifications which are strictly editorial in nature.

10. ADD indicates new provisions which are being proposed for addition.

PROPOSALS TO AMEND THE RADIO REGULATIONS

CHAPTER I

Terminology

ARTICLE 1

Terms and Definitions

Section III. Radio Services

ADD 22A 3.3A General-Satellite Service: A radiocommunication service using satellites for fixed and mobile applications.

Reason: To provide for both mobile and fixed satellite applications within one radio service.

MOD 24 3.5 *Inter-Satellite Service:* A radiocommunication service providing links between artificial ~~earth~~ satellites.

Reasons:

1. The proposed modification provides a more general definition to support other space-to-space communication links which are excluded by the text of the current definition.

2. A modification is required to permit communications such as:

   - links between deep space spacecraft and Earth-orbiting data relay satellites;

   - links between Earth-orbiting data relay satellites and data relay satellites orbiting around other celestial bodies.

ADD 46A 3.27A Radiolocation-Satellite Service: A radiodetermination-satellite service used for the purpose of radiolocation.

This service may also include feeder links necessary for its operation.

Reason:

To provide a radiodetermination-satellite service that specifically does not include radionavigation and the "safety-of-life" aspects associated with radionavigation.

CHAPTER III

Frequencies

ARTICLE 8

Frequency Allocations

Section IV. Table of Frequency Allocations

kHz
5730 - 6200

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	5730 - ~~5950~~ 5900 FIXED LAND MOBILE	5730 - ~~5950~~ 5900 FIXED MOBILE except aeronautical mobile (R)	5730 - ~~5950~~ 5900 FIXED Mobile except aeronautical mobile (R)
MOD	~~5730~~ 5900 - 5950 ~~FIXED~~ ~~LAND MOBILE~~ BROADCASTING 521A 521B 521C	~~5730~~ 5900 - 5950 ~~FIXED~~ ~~MOBILE except aeronautical mobile (R)~~ BROADCASTING 521A 521B 521C	~~5730~~ 5900 - 5950 ~~FIXED~~ ~~Mobile except aeronautical mobile (R)~~ BROADCASTING 521A 521B 521C
NOC	5950 - 6200 BROADCASTING		

Reason:

To provide additional allocations for the broadcasting service, but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile use on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

ADD 521A Emissions limited to single-sideband with characteristics specified in Appendix 45 to the Radio Regulations.

Reason:

To promote additional allocations for broadcasting while utilizing current technology.

ADD 521B The band 5900-5950 kHz is allocated to the fixed and mobile services on a primary basis subject to the procedure described in Resolution BBB.

Within this band, the date of commencement of operations in the broadcasting service shall not be earlier than the date of completion of satisfactory transfer, according to the procedures described in Resolution BBB, of all assignments to stations in the fixed and mobile services operating in accordance with the Table and other provisions of the Radio Regulations, which are recorded in the Master Register and which may be affected by broadcasting operations.

Reason:

To protect the fixed and mobile services until the reaccommodation procedure is completed and to facilitate the reaccommodation procedure in the accompanying Resolution BBB.

ADD 521C On condition that harmful interference is not caused to the broadcasting service, frequencies in the bands 5900-5950 kHz, 7400-7525 kHz, 9350-9500 kHz, 11550-11650 kHz, 13800-13900 kHz, 15600-15700 kHz, 17450-17550 kHz, and 18900-19300 kHz may be used by stations in the fixed and mobile services. The broadcasting service will exercise technical constraints that facilitate access to the bands by the fixed and mobile service. Use of these frequency bands by the fixed and mobile services will take appropriate account of broadcast schedules published in accordance with the Radio Regulations.

Reason:

Recognizing the continued need for use of the spectrum by the fixed and mobile services and the necessity of using the HF spectrum in the most efficient manner, this approach allows the broadcasting service to obtain and use additional spectrum while providing for fixed and mobile use where feasible. It is not intended to replace the requirement to accommodate existing fixed and mobile service assignments displaced by the allocation of spectrum to the broadcasting services. Rather, it allows for opportune access to the bands for itinerant fixed and mobile operations that may not require dedicated frequency assignments. At the same time, it encourages broadcast operations to use the most efficient technical characteristics (i.e., minimum power and antenna directivity) to reach their target areas.

kHz
6765 - 7300

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	6765 - ~~7000~~ 6900	FIXED Land Mobile 525 524	
MOD	~~6765~~ 6900 - 7000	~~FIXED~~ AMATEUR 510 AMATEUR-SATELLITE Land Mobile 525 525A	
NOC	7000 - 7100	AMATEUR 510 AMATEUR-SATELLITE 526 527	
MOD	7100 - ~~7300~~ 7200 ~~BROADCASTING~~ AMATEUR 510 AMATEUR-SATELLITE	7100 - ~~7300~~ 7200 AMATEUR 510 AMATEUR-SATELLITE ~~528~~	7100 - ~~7300~~ 7200 ~~BROADCASTING~~ AMATEUR 510 AMATEUR-SATELLITE
MOD	~~7100~~ 7200 - 7300 BROADCASTING	~~7100~~ 7200 - 7300 ~~AMATEUR 510~~ BROADCASTING ~~528~~ 528A	~~7100~~ 7200 - 7300 BROADCASTING

Reason:

To expand and realign the existing regional broadcast allocation at 7 MHz to create an exclusive worldwide allocation beginning at 7200 kHz. As a consequence, to expand and realign the existing regional amateur allocation

to create an exclusive worldwide allocation. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

ADD 525A The band 6900-7000 kHz is allocated to the fixed service on a primary basis subject to the procedure described in Resolution BBB. Within this band, the date of commencement of operations in the amateur service shall not be earlier than the date of completion of satisfactory transfer, according to the procedures described in Resolution BBB, of all assignments to stations in the fixed service operating in accordance with the Table and other provisions of the Radio Regulations, which are recorded in the Master Register and which may be affected by amateur operations.

Reason:

To protect the fixed service until the reaccommodation procedure is completed.

SUP 528

Reason:

With the change in allocation, the restriction is no longer necessary.

ADD 528A In Region 2 the band 7200-7300 kHz is allocated to the amateur service on a primary basis until 1 July 2007, which is the changeover date for the fixed and mobile services as described in Resolution BBB. Within this band, the commencement of operations in the broadcasting service in Region 2 shall not be earlier than that date.

Reason:

To protect the amateur service until the reaccommodation procedure is completed.

kHz
7525 - 8100

Allocation to Services		
Region 1	Region 2	Region 3
MOD 7300 - ~~8100~~ 7525	~~FIXED~~ ~~Land Mobile~~ BROADCASTING 528B 521C 528C	
MOD ~~7300~~ 7525 - 8100	FIXED Land Mobile 529	

Reason:

1. To expand and realign the existing regional broadcast allocation at 7 MHz to create an exclusive worldwide allocation at 7200-7400 kHz.

2. To provide additional allocations from 7400-7525 kHz for the broadcasting service but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile operations on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

ADD 528B Emissions in the band 7400-7525 kHz are limited to single-sideband with characteristics specified in Appendix 45 to the Radio Regulations.

Reason:

To promote additional allocations for broadcasting while utilizing current technology.

ADD 528C The bands 7300-7525 kHz, 9350-9500 kHz, 11550-11650 kHz, 13800-13900 kHz, 15600-15700 kHz, 17450-17550 kHz, and 18900-19300 kHz are allocated to the fixed service on a primary basis subject to the procedure described in Resolution BBB. Within these bands, the date of commencement of operations in the broadcasting service shall not be earlier than the date of completion of satisfactory transfer, according to the procedures described in Resolution BBB, of all assignments to stations in the fixed service operating in accordance with the Table and other provisions of the Radio Regulations, which are recorded in the Master Register and which may be affected by broadcasting operations.

Reason:
To protect the fixed service until the reaccommodation process is completed.

kHz
9040 - 9900

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	9040 - ~~9500~~ 9350 FIXED		
MOD	~~9500~~ 9350 - 9500 ~~FIXED~~ BROADCASTING 521A 521C 528C		
NOC	9500 - 9900 BROADCASTING 530 531		

Reason:

To provide additional allocations for the broadcasting service but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile use on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

kHz
11 400 - 12 050

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	11 400 - ~~11 650~~ 11 550 FIXED		
MOD	~~11 400~~ 11 550 - 11 650 ~~FIXED~~ BROADCASTING 521A 521C 528C		
NOC	11 650 - 12 050 BROADCASTING 530 531		

Reason:

To provide additional allocations for the broadcasting service but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile use on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

kHz
13 600 - 14 000

	Allocation to Services		
	Region 1	Region 2	Region 3
NOC	13 600 - 13 800	BROADCASTING 531	
MOD	13 800 - ~~14 000~~ 13 900	~~FIXED~~ ~~Mobile except aeronautical mobile (R)~~ BROADCASTING 521A 521C 528C	
MOD	~~13 800~~ 13 900 - 14 000	FIXED Mobile except aeronautical mobile (R)	

Reason:

To provide additional allocations for the broadcasting service but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile use on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

kHz
15 100 - 16 360

	Allocation to Services		
	Region 1	Region 2	Region 3
NOC	15 100 - 15 600	BROADCASTING 531	
MOD	15 600 - ~~16 360~~ 15 700	~~FIXED~~ BROADCASTING 521A 521C 528C	
MOD	~~15 600~~ 15 700 - 16 360	FIXED 536	

Reason:

To provide additional allocations for the broadcasting service but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile use on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

kHz
17 410 - 17 900

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	17 410 - ~~17 550~~ 17 450	FIXED	
MOD	~~17 410~~ 17 450 - 17 550	~~FIXED~~ BROADCASTING 521A 521C 528C	
NOC	17 550 - 17 900	BROADCASTING 531	

Reason:

To provide additional allocations for the broadcasting service but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile use on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

kHz
18 900 - 19 680

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	18 900 - ~~19 680~~ 19 300	~~FIXED~~ BROADCASTING 521A 521C 528C	
MOD	~~18 900~~ 19300 - 19 680	FIXED	

Reason:

To provide additional allocations for the broadcasting service but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile use on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

MHz
137 - 138

Allocation to Services		
Region 1	Region 2	Region 3
MOD 137 - 138		
SPACE OPERATION (space-to-Earth)		
METEOROLOGICAL-SATELLITE (space-to-Earth)		
SPACE RESEARCH (space-to-Earth)		
MOBILE-SATELLITE (space-to-Earth) 596A 596B		
Fixed		
Mobile except aeronautical mobile (R)		
596 597 598 599		

ADD 596A The mobile-satellite service is limited to low earth orbit satellite systems.

ADD 596B The mobile-satellite (space-to-Earth) service is secondary to the meteorological-satellite (space-to-Earth) service in the frequency ranges 137.025 to 137.175 MHz and 137.825 to 137.975 MHz.

Reason:

To provide a mobile-satellite service (space-to-Earth) allocation for low earth orbit satellite systems while protecting meteorological-satellite operations.

MHz
146 - 149.9

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	146 - ~~149.9~~ 148 FIXED MOBILE except aero-nautical mobile (R) ~~608~~	146 - 148 AMATEUR 607	146 - 148 AMATEUR FIXED MOBILE 607
MOD	~~146~~ 148 - 149.9 FIXED MOBILE except aero-nautical mobile (R) MOBILE-SATELLITE (Earth-to-space) 596A 608	148 - 149.9 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 596A 608	

Reason:

To provide a mobile-satellite service (Earth-to-space) allocation for low earth orbit satellite systems.

MHz
400.15-401

Allocation to Services		
Region 1	Region 2	Region 3
400.15 - 401 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 596A SPACE RESEARCH (space-to-Earth) 647A Space Operation (space-to-Earth) 647		

ADD 647A The band 400.15 - 401 MHz is also allocated to the space research service, which is not a safety service, in the space-to-space direction for communications with manned space vehicles.

Reason:

1. To provide a mobile-satellite service (space-to-Earth) allocation for low earth orbit satellite systems.

2. To provide a primary allocation for a new space service application concerning communication links with manned space vehicles. This allocation will permit communications over larger distances than EVA, for example, during docking maneuvers, and requiring higher power than that available from an astronaut's suit.

MHz
410 - 420

Allocation to Services		
Region 1	Region 2	Region 3
410 - 420 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (Space-to-space) 651A		

MOD

ADD 651A Use of the band 410-420 MHz by the space research service, which is not a safety service, is limited to communication links within 5 km of an orbiting, manned space vehicle. Such space stations in this service shall not cause harmful interference to stations operating in the fixed and mobile

services.

Reason:

To provide an allocation for a new space service application concerning communications with manned space vehicles, while protecting the interests of existing fixed and mobile allocations in the same band. The extra-vehicular activity (EVA) system is to provide communications among astronauts and base spacecraft while astronauts are performing activities outside the base spacecraft, e.g., maintenance.

MHz
470 -890

Allocation to Services		
Region 1	Region 2	Region 3
470 - 790 BROADCASTING	470 - 512 BROADCASTING Fixed Mobile 674 675	470 - 585 FIXED MOBILE BROADCASTING 673 677 679
	512 - 608 BROADCASTING 678	585 - 610 FIXED MOBILE BROADCASTING RADIONAVIGATION 688 689 690
	608 - 614 RADIO ASTRONOMY Mobile-Satellite except aeronautical mobile-satellite (Earth-to-space)	
676 677A 682 683 684 685 686 686A MOD 687 689 693 694	614 - 806 BROADCASTING Fixed Mobile 675 692 692A 693	610 - 890 FIXED MOBILE BROADCASTING
790 - 862 FIXED MOD BROADCASTING 694 695 695A 696 697 702 <u>704B</u>	806 - 890 FIXED MOBILE BROADCASTING	
862 - 890 FIXED MOBILE except aeronautical mobile BROADCASTING 703 MOD 704	692A 700 <u>704B</u>	677 688 689 <u>704B</u> 690 691 693 701

ADD 704B The bands 849-851 MHz and 894-896 MHz are also allocated to the aeronautical mobile service for public correspondence with aircraft. The

band 849-851 MHz is limited to transmissions from aeronautical stations and the use of the band 894-896 MHz is limited to transmissions from aircraft stations.

Reason:

To provide a worldwide allocation for public correspondence to aircraft with terrestrial stations so that a common service can be offered in all parts of the world using the same aircraft equipment. The frequencies proposed are already in use by some administrations for public correspondence with aircraft.

MHz
890 -942

Allocation to Services		
Region 1	Region 2	Region 3
890 - 942 FIXED MOBILE except aero-nautical mobile BROADCASTING 703 Radiolocation	890 - 902 FIXED MOBILE except aero-nautical mobile Radiolocation 704A 705 704B	890 - 942 FIXED MOBILE BROADCASTING Radiolocation
	902 - 928 FIXED Amateur Mobile except aero-nautical mobile Radiolocation 705 707 707A	
	928 - 942 FIXED MOBILE except aero-nautical mobile Radiolocation	
MOD 704 704B	705	706 704B

RECOMMENDED U.S. PROPOSALS

MHz
1429-1525

Allocation to Services		
Region 1	Region 2	Region 3
1429 - 1525	1429 - 1525	
FIXED 722A	FIXED 722A	
MOBILE except aero-nautical mobile 722B	MOBILE 722B MOD 723	
722 YYY	722 YYY	

MOD

ADD 722A The fixed service may continue to operate in a specific service area in the band designated in YYY on a primary basis until 1 January 1997 or until a broadcasting-satellite (sound) service or broadcasting service has been brought into use in such a manner as to affect or be affected by the fixed service in that service area, whichever is later.

ADD 722B The mobile service may continue to operate in a specific service area in the band designated in YYY on a primary basis until 1 January 1997 or until a broadcasting-satellite (sound) service or broadcasting service has been brought into use in such a manner as to affect or be affected by the mobile service in that service area, whichever is later.

MOD 723 In Region 2, in Australia and Papua New Guinea, the use of the band ~~1435~~ 1429 - ~~1535~~ 1525 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile service.

ADD YYY Some portion of this band will be allocated to the broadcasting-satellite (sound) service and the broadcasting service. The fixed and mobile services in the portion designated will be allocated on a secondary basis.

Reason:

This proposal attempts to provide an allocation for the Broadcasting-Satellite Service (sound) and a complementary Broadcasting Service. As a consequence to this proposal, we will need to reaccommodate flight, test and telemetry operations.

MHz
1525 - 1530

MOD

Allocation to Services		
Region 1	Region 2	Region 3
1525 - 1530	1525 - 1530	1525 - 1530
SPACE OPERATION (Space-to-Earth)	SPACE OPERATION (Space-to-Earth)	SPACE OPERATION (Space-to-Earth)
MOBILE-SATELLITE (Space-to-Earth)	MOBILE-SATELLITE (Space-to-Earth)	MOBILE-SATELLITE (Space-to-Earth)
~~FIXED~~		~~FIXED~~
Fixed 723B	Fixed	Fixed 723B
Earth Exploration-Satellite	Earth Exploration-Satellite	Earth Exploration-Satellite
Mobile except aeronautical mobile 724	Mobile ~~723~~	Mobile ~~723~~ 724
722 725	722 723A	722

ADD 723B Fixed service operations can continue on a primary basis until January 1, 1997.

Reason:

To provide an allocation for the mobile-satellite service and to ensure the flexibility to stimulate the developing requirements for this service.

MHz
1530 - 1533

MOD

Allocation to Services		
Region 1	Region 2	Region 3
1530 - 1533 SPACE OPERATION (Space-to-Earth) ~~MARITIME MOBILE-SATELLITE (Space-to-Earth)~~ ~~LAND MOBILE-SATELLITE (Space-to-Earth)~~ MOBILE-SATELLITE (Space-to-Earth) Earth Exploration-Satellite Fixed Mobile except aeronautical mobile 722 ~~726~~ 726A 726C	1530 - 1533 SPACE OPERATION (Space-to-Earth) ~~MARITIME MOBILE-SATELLITE (Space-to-Earth)~~ ~~LAND MOBILE-SATELLITE (Space-to-Earth)~~ MOBILE-SATELLITE (Space-to-Earth) Earth Exploration-Satellite Fixed Mobile ~~723~~ 722 ~~726~~ 726A 726C	

SUP 726

ADD 726C In the frequency bands 1530-1544 MHz and 1626.5-1645.5 MHz maritime mobile-satellite distress and safety communications, *e.g.*, Global Maritime Distress and Safety System (GMDSS), shall have priority access with real-time preemptive capability in the mobile-satellite service. Communications of mobile-satellite system stations not participating in the GMDSS shall operate on a secondary basis to distress and safety communications of stations operating in the GMDSS. Account shall be taken of the priority of safety-related communications in the mobile-satellite service.

Reason:

To provide an allocation for the mobile-satellite service and to ensure the flexibility to stimulate the developing requirements for this service while providing protection for safety and distress communications in the maritime mobile-satellite service. The suppression of RR 726 is consequential to these proposals and the expiration of the effectiveness date.

MHz
1533 - 1544

Allocation to Services		
Region 1	Region 2	Region 3
1533 - 1535 SPACE OPERATION (Space-to-Earth ~~MARITIME MOBILE-SATELLITE (Space-to-Earth)~~ MOBILE-SATELLITE (Space-to-Earth) ~~Land Mobile-Satellite (Space-to-Earth) 726B~~ Earth Exploration-Satellite Fixed Mobile except aeronautical mobile 722 ~~726~~ 726A 726C	1533 - 1535 SPACE OPERATION (Space-to-Earth) ~~MARITIME MOBILE-SATELLITE (Space-to-Earth)~~ MOBILE-SATELLITE (Space-to-Earth) ~~Land Mobile-Satellite (Space-to-Earth) 726B~~ Earth Exploration-Satellite Fixed Mobile ~~723~~ 722 ~~726~~ 726A 726C	
1535 - 1544 ~~MARITIME MOBILE-SATELLITE (Space-to-Earth)~~ MOBILE-SATELLITE (Space-to-Earth) ~~Land Mobile-Satellite (Space-to-Earth) 726B~~ 722 726A 726C 727		

MOD

SUP 726B
Mob-87

Reason:

To provide an allocation for the mobile-satellite service and to ensure the flexibility to stimulate the developing requirements for this service while providing protection for safety and distress communications in the maritime mobile-satellite service. RR 726B is suppressed as a consequence of adding mobile-satellite service in the bands.

MHz
1545 - 1559

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	1545 - 1555 ~~AERONAUTICAL MOBILE-SATELLITE (R) (Space-to-Earth)~~ MOBILE-SATELLITE (Space-to-Earth) 722 726A 727 729 ~~729A~~ 730 730B		
MOD	1555 - 1559 ~~LAND MOBILE-SATELLITE (Space-to-Earth)~~ MOBILE-SATELLITE (Space-to-Earth) 722 726A 727 730 ~~730A~~ 730B		

SUP 729A
Mob-87

SUP 730A
Mob-87

ADD 730B The aeronautical mobile-satellite (R) service shall have priority access with real-time preemptive capability over all other communications in the mobile-satellite service. Systems not interoperable with the aeronautical mobile-satellite (R) service shall operate on a secondary basis. Account shall be taken of the priority of safety-related communications in the other mobile-satellite services.

Reason:

To provide an allocation for the mobile-satellite service while maintaining the flexibility to provide for developing requirements in the aeronautical mobile-satellite (R) service while providing protection for safety and distress communications in the aeronautical mobile-satellite (R) service. RR 729A and RR 730A are suppressed as a consequence of adding the mobile-satellite service in the bands.

MHz
1610 - 1626.5

MOD

Allocation to Services		
Region 1	Region 2	Region 3
1610 - 1626.5	1610 - 1626.5	1610 - 1626.5
AERONAUTICAL RADIONAVIGATION	AERONAUTICAL RADIONAVIGATION	AERONAUTICAL RADIONAVIGATION
RADIODETERMINATION-SATELLITE (Earth-to-space) 733A	RADIODETERMINATION-SATELLITE (Earth-to-space) 733A	~~Radiodetermination-Satellite (Earth-to-space) 733A 733E~~ RADIODETERMINATION-SATELLITE (Earth-to-space) 733A
MOBILE-SATELLITE (Earth-to-space)	MOBILE-SATELLITE (Earth-to-space)	MOBILE-SATELLITE (Earth-to-space)
722 727 730 731 731A 731B 731D 732 733 733B ~~733E~~ ~~733F~~ 733Y 733Z MOD 734	722 731B 731C 732 733 733C 733D 733Y 733Z MOD 734	722 727 730 731B 731C 732 733 733B 733Y 733Z MOD 734

SUP 733E
Mob-87

SUP 733F
Mob-87

ADD 733Y The band 1613.8 - 1626.5 MHz is also allocated to the mobile-satellite service (space-to-Earth) on a secondary basis.

ADD 733Z Systems in the mobile-satellite service shall be introduced into these bands in accordance with appropriate CCIR Recommendations in order to ensure compatibility with the radiodetermination-satellite service.

MOD 734 The band 1610.6 - 1613.8 MHz is also allocated to the radioastronomy service on a ~~secondary~~ primary basis for spectral line observations. In making assignments to stations of other services to which the band is allocated, administrations ~~are urged to~~ shall take all practicable steps to protect the radioastronomy service from harmful interference. Emissions from space or airborne stations can be particularly serious sources of interference to the radioastronomy service (see Nos. 343 and 344 and Article 36).

Reason:

To provide additional allocations for the mobile-satellite service. A space-to-earth, secondary allocation for the mobile-satellite service is provided by ADD 733Y to permit additional flexibility for such systems. The radiodetermination-satellite and mobile-satellite (Earth-to-space) services are to have compatible characteristics as proposed by ADD 733Z. It is

necessary as a consequence to upgrade the radiodetermination-satellite service in Regions 1 and 3 to a co-primary service with the mobile-satellite service and to upgrade the radioastronomy service to primary status in MOD RR 734. Suppression of RR 733E and 733F are consequential amendments.

MHz
1626.5 - 1645.5

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	1626.5 - 1631.5 ~~MARITIME MOBILE-SATELLITE (Earth-to-space)~~ MOBILE-SATELLITE (Earth-to-space) ~~Land Mobile-Satellite (Earth-to-space) 726B~~ 722 726A 726C 727 730		
MOD	1631.5 - 1634.5 ~~MARITIME MOBILE-SATELLITE (Earth-to-space)~~ ~~LAND MOBILE-SATELLITE (Earth-to-space)~~ MOBILE-SATELLITE (Earth-to-space) 722 726A 726C 727 730 734A		
MOD	1634.5 - 1645.5 ~~MARITIME MOBILE-SATELLITE (Earth-to-space)~~ MOBILE-SATELLITE (Earth-to-space) ~~Land Mobile-Satellite (Earth-to-space) 726B~~ 722 726A 726C 727 730		

Reason:

To provide an allocation for the mobile-satellite service and to ensure the flexibility to stimulate the developing requirements for this service while providing protection for safety and distress communications in the maritime mobile-satellite service.

MHz
1646.5 - 1660.5

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	1646.5 - 1656.5 ~~AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space)~~ MOBILE-SATELLITE (Earth-to-space) 722 726A 727 729A 730 730B 735		
MOD	1656.5 - 1660 ~~LAND MOBILE-SATELLITE (Earth-to-space)~~ MOBILE-SATELLITE (Earth-to-space) 722 726A 727 730 ~~730A~~ 730B 734A		
MOD	1660 - 1660.5 RADIO ASTRONOMY ~~LAND MOBILE-SATELLITE (Earth-to-space)~~ MOBILE-SATELLITE (Earth-to-space) 736A 722 726A ~~730A~~ 730B 736		

ADD 736A Aeronautical Mobile-Satellite (R) Service is the only aeronautical mobile-satellite service permitted in this band consistent with ADD 730B.

Reason:

To provide an allocation for the mobile-satellite service while maintaining the flexibility to provide for developing requirements in the aeronautical mobile-satellite (R) service and providing protection for safety and distress communications in the aeronautical mobile-satellite (R) service. Footnote 736A will provide protection to radioastronomy by limiting the type of aeronautical use.

MHz
1710 - 2025

Allocation to Services		
Region 1	Region 2	Region 3
1710 - ~~2290~~ 2025 FIXED Mobile 722 743A 744 746 746A ~~747 748 750~~	1710 - ~~2290~~ 2025 FIXED MOBILE 722 744 745 746 746A ~~747 748 749 750~~	

MOD

ADD 746A The band 1850 - 1990 MHz is also allocated to the mobile-satellite service on a primary basis.

SUP 750

Reason: To provide additional allocations to the mobile-satellite service to permit flexibility to address requirements in this area.

MHz
2025 - 2110

Allocation to Services		
Region 1	Region 2	Region 3
~~1710~~ 2025 - ~~2290~~ 2110 FIXED SPACE RESEARCH (Earth-to-space) (Space-to-space) SPACE OPERATION (Earth-to-space) (Space-to-space) EARTH EXPLORATION- SATELLITE (Earth- to-space) (Space- to-space) Mobile ~~722~~ 743A ~~744~~ ~~746~~ ~~747 748 750~~	~~1710~~ 2025 - ~~2290~~ 2110 FIXED SPACE RESEARCH (Earth-to-space) (Space-to-space) SPACE OPERATION (Earth-to-space) (Space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (Space-to-space) MOBILE ~~722~~ ~~744~~ ~~745~~ ~~746~~ ~~747 748 749 750~~	

MOD

SUP 747

Reason: To upgrade the allocation status of the space research, space operations, and earth exploration-satellite services in the band 2025-2110 MHz. Suppression of RR 747 is consequential.

MHz
2110 - 2120

MOD

Region 1	Region 2	Region 3
~~1710~~ 2110 - ~~2290~~ 2120	~~1710~~ 2110 - ~~2290~~ 2120	
FIXED MOBILE-SATELLITE (Space-to-Earth) SPACE RESEARCH (Earth-to-space) (Deep Space) Mobile	FIXED MOBILE-SATELLITE (Space-to-Earth) MOBILE SPACE RESEARCH (Earth-to-space) (Deep Space)	
~~722~~ 743A ~~744~~ ~~746~~ ~~747~~ ~~748~~ ~~750~~	~~722~~ ~~744~~ ~~745~~ ~~746~~ ~~747~~ ~~748~~ ~~749~~ ~~750~~	

SUP 748

SUP 749

Reason:

1. To provide additional allocations for the mobile-satellite service to permit flexibility to provide for the developing requirements for this service. To elevate the space research, space operation, and earth exploration-satellite service to primary status to facilitate the coordination of these services.

2. Deletion of footnotes 722, 744, 745, and 746; and the suppression of footnotes 747, 748, 749, and 750 in the various bands is a consequence of the primary allocation to the space research, space operation, and earth exploration-satellite services under the new proposed band limits. The time period for RR 749 has expired.

MHz
2120 - 2200

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	~~1710~~ 2120 - ~~2290~~ 2130 FIXED Mobile MOBILE-SATELLITE (space-to-Earth) ~~722~~ 743A ~~744~~ ~~746~~ ~~747~~ ~~748~~ ~~750~~	~~1710~~ 2120 - ~~2290~~ 2130 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) ~~722~~ ~~744~~ ~~745~~ ~~746~~ ~~747~~ ~~748~~ ~~749~~ ~~750~~	
MOD	~~1710~~ 2130 - ~~2290~~ 2160 FIXED Mobile ~~722~~ 743A ~~744~~ ~~746~~ ~~747~~ ~~748~~ ~~750~~	~~1710~~ 2130 - ~~2290~~ 2160 FIXED MOBILE ~~722~~ ~~744~~ ~~745~~ ~~746~~ ~~747~~ ~~748~~ ~~749~~ ~~750~~	
MOD	~~1710~~ 2160 - ~~2290~~ 2180 FIXED Mobile MOBILE-SATELLITE (space-to-Earth) ~~722~~ 743A ~~744~~ ~~746~~ ~~747~~ ~~748~~ ~~750~~	~~1710~~ 2160 - ~~2290~~ 2180 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) ~~744~~ ~~745~~ ~~746~~ ~~747~~ ~~748~~ ~~750~~	
MOD	~~1710~~ 2180 - ~~2290~~ 2200 FIXED Mobile ~~722~~ 743A ~~744~~ ~~746~~ ~~747~~ ~~748~~ ~~750~~	~~1710~~ 2180 - ~~2290~~ 2200 FIXED MOBILE ~~722~~ ~~744~~ ~~745~~ ~~746~~ ~~747~~ ~~748~~ ~~749~~ ~~750~~	

Reason:

To provide additional allocations for the mobile-satellite service.

MHz
2200 - 2290

Allocation to Services		
Region 1	Region 2	Region 3
MOD ~~1710~~ 2200 - 2290	~~1710~~ 2200 - 2290	
FIXED	FIXED	
SPACE RESEARCH (Space-to-Earth) (Space-to-space)	SPACE RESEARCH (Space-to-Earth) (Space-to-space)	
SPACE OPERATION (Space-to-Earth) (Space-to-space)	SPACE OPERATION (Space-to-Earth) (Space-to-space)	
EARTH EXPLORATION-SATELLITE (Space-to-Earth) (Space-to-space)	EARTH EXPLORATION-SATELLITE (Space-to-Earth) (Space-to-space)	
Mobile	MOBILE	
~~722~~ 743A ~~744~~ ~~746~~ ~~747~~ ~~748~~ ~~750~~	~~722~~ ~~744~~ ~~745~~ ~~746~~ ~~747~~ ~~748~~ ~~749~~ ~~750~~	

Reasons:

1. To provide a primary allocation for space services that support safety communications for satellites and manned space flight missions; to eliminate the Article 14 coordination requirement for these services.

2. In order to protect the fixed and mobile operations, the PFD limit in No. 2559 will be extended to these bands.

3. Deletion of footnotes 722, 744, 745, and 746; and the suppression of footnotes 747, 748, 749, and 750 in the various bands is a consequence of the primary allocation to the space research, space operation, and earth exploration-satellite services under the new proposed band limits.

MHz
2300 - 2390

Allocation to Services		
Region 1	Region 2	Region 3
MOD 2300 - ~~2450~~ 2390 FIXED 751A Amateur Mobile Radiolocation 664 743A ~~752~~ ZZZ	2300 - ~~2450~~ 2390 FIXED 751A MOBILE 751B RADIOLOCATION 751C Amateur 664 751 ~~752~~ ZZZ	

MOD 751 In Australia, the United States and Papua New Guinea, the use of the band 2310 - 2390 MHz and 2430 - 2450 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile service.

ADD 751A The fixed service may continue to operate in a specific service area in the band designated in ZZZ on a primary basis until 1 January 1997 or until a broadcasting-satellite (sound) service or broadcasting service has been brought into use in such a manner as to affect or be affected by the fixed service in that service area, whichever is later.

ADD 751B The mobile service may continue to operate in a specific service area in the band designated in ZZZ on a primary basis until 1 January 1997 or until a broadcasting-satellite (sound) service or broadcasting service has been brought into use in such a manner as to affect or be affected by the mobile service in that service area, whichever is later.

ADD 751C The radiolocation service may continue to operate in a specific service area in the band designated in ZZZ on a primary basis until 1 January 1997 or until a broadcasting-satellite (sound) service or broadcasting service has been brought into use in such a manner as to affect or be affected by the radiolocation service in that service area, whichever is later.

ADD ZZZ Some portion of this band will be allocated to the Broadcasting Satellite (Sound) Service and the Broadcasting Service. The radiolocation and mobile services in Regions 2 and 3 and the fixed service in Regions 1, 2, and 3 in the portion designated will be allocated on a secondary basis.

Reason:

This proposal attempts to provide an allocation for the Broadcasting-Satellite Service (sound) and a complementary Broadcasting Service. As a consequence to this proposal, we will need to reaccommodate flight, test and telemetry operations.

MHz
2390 - 2450

MOD

Allocation to Services		
Region 1	Region 2	Region 3
~~2300~~ 2390 - ~~2450~~ 2430 Fixed 752A ~~FIXED~~ Amateur Mobile Radiolocation MOBILE-SATELLITE (Earth-to-space) 664 743A 752	~~2300~~ 2390 - ~~2450~~ 2430 Fixed 752A ~~FIXED~~ Mobile 752C ~~MOBILE~~ ~~RADIOLOCATION~~ Radiolocation 752B Amateur MOBILE-SATELLITE (Earth-to-space) 664 ~~751~~ 752	
~~2300~~ 2430 - 2450 FIXED Amateur Mobile Radiolocation 664 743A 752	~~2300~~ 2430 - 2450 FIXED MOBILE RADIOLOCATION Amateur 664 MOD 751 752	

ADD 752A The fixed service may continue to operate in a specific service area in the band 2390 - 2430 MHz on a primary basis until 1 January 1997 or until a mobile-satellite service (Earth-to-space) has been brought into use in such a manner as to affect or be affected by the fixed service in that service area, whichever is later.

ADD 752B The radiolocation service may continue to operate in a specific service area in the band 2390 - 2430 MHz on a primary basis until 1 January 1997 or until a mobile-satellite service (Earth-to-space) has been brought into use in such a manner as to affect or be affected by the radiolocation service in that service area, whichever is later.

ADD 752C The mobile service may continue to operate in a specific service area in the band 2390 - 2430 MHz on a primary basis until 1 January 1997 or until a mobile-satellite service (Earth-to-space) has been brought into use in such a manner as to affect or be affected by the mobile service in that service area, whichever is later.

Reason:

These proposals are to provide allocations for the mobile-satellite service (Earth-to-space). These allocations will permit flexibility to provide for the developing requirements for this service.

MHz
2483.5 - 2500

Allocation to Services		
Region 1	Region 2	Region 3
2483.5 - 2500 FIXED MOBILE RADIODETERMINATION-SATELLITE (Space-to-Earth) 753A MOBILE-SATELLITE (Space-to-Earth) Radiolocation ~~733F~~ 733Z 752 ~~753A~~ 753B ~~753C~~ 753E	2483.5 - 2500 FIXED MOBILE RADIODETERMINATION-SATELLITE 753A (Space-to-Earth) MOBILE-SATELLITE (Space-to-Earth) RADIOLOCATION 733Z 752 753D	2483.5 - 2500 FIXED MOBILE RADIODETERMINATION-SATELLITE (Space-to-Earth 753A ~~Radiodetermination-Satellite (Space-to-Earth) 753A~~ MOBILE-SATELLITE (Space-to-Earth) RADIOLOCATION 733Z 752 ~~753C~~

MOD

SUP 753C
Mob-87

Reason:

To provide additional allocations for the mobile-satellite service. Since the radiodetermination-satellite service and the mobile-satellite service will have compatible characteristics, it is necessary as a consequence to upgrade the radiodetermination-satellite service in Regions 1 and 3 to a co-primary service with the mobile-satellite service.

MHz
2500 - 2655

Allocation to Services		
Region 1	Region 2	Region 3
2500 - 2655 FIXED 762 763 764 MOBILE (except aero-nautical mobile) BROADCASTING-SATELLITE 757 760 720 753 <u>754</u> 756 758 759	2500 - 2655 FIXED 762 764 FIXED-SATELLITE (space-to-Earth) 761 MOBILE (except aero-nautical mobile) BROADCASTING-SATELLITE 757 760 720 755	2500 - 2535 FIXED 762 764 FIXED-SATELLITE (space-to-Earth) 761 MOBILE (except aero-nautical mobile) BROADCASTING-SATELLITE 757 760 MOD 754 2535 - 2655 FIXED 762 764 MOBILE (except aero-nautical mobile) BROADCASTING-SATELLITE 757 760 720

MOD 754 Subject to agreement obtained under the procedure set forth in Article 14, the band 2500 - 2535 MHz may also be used in Regions <u>1 and</u> 3 for the mobile-satellite (space-to-Earth)~~, except aeronautical mobile-satellite service,~~ for operation limited to within national boundaries.

<u>Reason:</u>

To provide additional allocations for the mobile-satellite service.

MHz
2655 - 2690

Allocation to Services		
Region 1	Region 2	Region 3
2655 -2690	2655 - 2690	2655 - 2690
FIXED 762 763 764 MOBILE except aero-nautical mobile BROADCASTING-SATELLITE 757 760 Earth Exploration-Satellite (passive) Radio Astronomy Space Research (passive)	FIXED 762 764 FIXED-SATELLITE (Earth-to space) (space-to-Earth) 761 MOBILE except aero-nautical mobile BROADCASTING-SATELLITE 757 760 Earth Exploration-Satellite (passive) Radio Astronomy Space Research (passive)	FIXED 762 764 FIXED-SATELLITE (Earth-to space) 761 MOBILE except aero-nautical mobile BROADCASTING-SATELLITE 757 760 Earth Exploration-Satellite (passive) Radio Astronomy Space Research (passive)
758 759 765 766	765	765 MOD 766

MOD 766 Subject to agreement obtained under the procedure set forth in Article 14, the band 2655 - 2690 MHz may also be used in Regions 1 and 3 for the mobile-satellite (Earth-to-space), ~~except aeronautical mobile-satellite,~~ service for operation limited to within national boundaries.

Reason:

To provide additional allocations for the mobile-satellite service.

GHz
11.7 - 12.75

MOD

Allocation to Services		
Region 1	Region 2	Region 3
MOD 11.7 - 12.5 FIXED BROADCASTING BROADCASTING-SATELLITE 838A Mobile except aeronautical mobile 838	11.7 - 12.1 FIXED 837 FIXED-SATELLITE (space-to-Earth) Mobile except aeronautical mobile 836 839	11.7 - 12.2 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 838A
	12.1 - 12.2 FIXED-SATELLITE (space-to-Earth) 836 839 842	838
	12.2 - 12.7 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 838A	12.2 - 12.5 FIXED MOBILE except aeronautical mobile BROADCASTING 838 845
12.5 - 12.75 FIXED-SATELLITE (space-to-Earth) (Earth-to-Space) 848 849 850	839 844 846 12.7 - 12.75 FIXED FIXED-SATELLITE MOBILE except aeronautical mobile	12.5 - 12.75 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile BROADCASTING-SATELLITE 847

ADD 838A When implementing broadcasting-satellite systems in this band, administrations should bear in mind the possible use of this band for wide-RF band high definition television via satellite.

Reason:

To provide for the future development of wide-Rf band high definition television from satellite, in accordance with Resolution No. 521.

GHz
14.5 - 14.8

Allocation to Services		
Region 1	Region 2	Region 3
14.5 - 14.8	FIXED FIXED-SATELLITE (Earth-to-space) 863 MOBILE Space Research	

NOC

NOC 863

Reason: The current allocations are still required.

GHz
19.7 - 20.2

Allocation to Services		
Region 1	Region 2	Region 3
19.7 - 20.2	~~FIXED-SATELLITE (space-to-Earth)~~ ~~Mobile-Satellite (space-to-Earth)~~ GENERAL-SATELLITE (space-to-Earth) 873	

MOD

Reason:

To provide spectrum for a new satellite service that will be able to provide service for a wide variety of fixed and mobile applications from a single space platform.

GHz
21.4 - 22

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	21.4 - ~~22~~ 21.7 FIXED MOBILE		
MOD	~~21.4~~ 21.7 - 22 FIXED MOBILE INTER-SATELLITE		

Reason:

To provide an additional allocation for inter-satellite links between mobile-satellite service satellites.

GHz
24.25 - 25.25

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	24.25 - ~~25.25~~ 24.55 RADIONAVIGATION		
MOD	~~24.25~~ 24.55 - ~~25.25~~ 24.65 ~~RADIONAVIGATION~~ RADIOLOCATION-SATELLITE SERVICE		
MOD	~~24.25~~ 24.65 - 25.25 ~~RADIONAVIGATION~~ BROADCASTING-SATELLITE		

Reason:

1. To provide for a satellite based location and messaging service.

2. To provide an alternative allocation to meet HDTV-BSS requirements that may not be able to be satisfied in the 12 GHz BSS allocations.

GHz
25.25-27.5

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	25.25 - 27 FIXED MOBILE INTER-SATELLITE Earth Exploration-Satellite (Space-to-space) Standard Frequency and Time Signal-Satellite (Earth-to-space)		
MOD	27 - 27.5 FIXED MOBILE INTER-SATELLITE Earth Exploration-Satellite (Space-to-space)	27 - 27.5 FIXED<br~~FIXED-SATELLITE (Earth-to-space)~~ MOBILE INTER-SATELLITE Earth Exploration-Satellite (Space-to-space)	

Reasons:

1. To provide a primary allocation in the bands 25.25-27.5 GHz for wide bandwidth space-to-space data return links from user spacecraft to the data relay satellite (*e.g.* US ATDRS) and to provide a primary allocation for wideband links between a permanent Space Station and co-orbiting free flyers. Fixed-satellite service is deleted as a consequential change to adding the inter-satellite service.

GHz
27.5 - 29.5

Allocation to Services		
Region 1	Region 2	Region 3
27.5 - 29.5 FIXED FIXED-SATELLITE (Earth-to-space) 881A MOBILE		

MOD

ADD 881A Beacon transmissions in the Fixed-Satellite Service (space-to-Earth) are also permitted for the purpose of uplink power control.

Reason:

Significant attenuation occurs in the fixed-satellite service uplinks in this frequency range. Provision of a downlink beacon in this band will allow operators of FSS systems to provide the necessary adjustments in uplink power during these times of signal attenuation.

GHz
29.5 - 30

Allocation to Services		
Region 1	Region 2	Region 3
29.5 - 30 ~~FIXED-SATELLITE (Earth-to-space)~~ GENERAL-SATELLITE (Earth-to-space) ~~Mobile-Satellite (Earth-to-space)~~ 882 883		

MOD

Reason:

To provide spectrum for a new satellite service that will be able to provide service for a wide variety of fixed and mobile applications from a single space platform.

GHz
31.8 - 32.3

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	31.8 - 32 RADIONAVIGATION SPACE RESEARCH (Deep Space) (Space-to-Earth) ~~Space Research~~ ~~890~~ 891 892		
MOD	32 - 32.3 INTER-SATELLITE RADIONAVIGATION SPACE RESEARCH (Deep Space) (Space-to-Earth) ~~Space Research~~ ~~890~~ 891 892 893		

SUP 890

Reason:

The existing primary space research service downlink allocations are paired with 34.2-34.7 GHz and are applicable only in the United States, Spain and Australia (No. 890). As support requirements for space activities increase in quantity and complexity, it is becoming critical to be able to use these frequency bands on a worldwide basis for deep space exploration.

GHz
34.2 - 34.7

Allocation to Services		
Region 1	Region 2	Region 3
34.2 - ~~35.2~~ 34.7 RADIOLOCATION SPACE RESEARCH (Deep Space) (Earth-to-space) Space Research ~~895~~ 896 894		

MOD

SUP 895

Reason:

The existing primary space research service uplink allocations are paired with 31.8-32.3 GHz and are applicable only in the United States, Spain and Australia (No. 895). As support requirements for space activities increase in quantity and complexity, it is becoming critical to be able to use these frequency bands on a worldwide basis for deep space exploration.

GHz
37 - 37.5

Allocation to Services		
Region 1	Region 2	Region 3
37 - 37.5 FIXED MOBILE SPACE RESEARCH (Space-to-Earth) 899		

MOD

Reasons:

1. To provide the downlink communications necessary to enable further manned exploration of the solar system, paired with the uplink band at 39.5-40.5 GHz.

2. To provide for wideband data return links from Very Long Baseline Interferometry (VLBI) observations by satellite.

GHz
37.5 - 39.5

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	37.5 - ~~39.5~~ 38.0 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE SPACE RESEARCH (space-to-Earth) 899		
MOD	~~37.5~~ 38.0 - 39.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 899		

Reason:

To provide for wideband data return links from Very Long Baseline Interferometry (VLBI) observations by satellite.

GHz
39.5 - 40.5

Allocation to Services		
Region 1	Region 2	Region 3
MOD 39.5 - 40.5 FIXED FIXED-SATELLITE (Space-to-Earth) MOBILE MOBILE-SATELLITE (Space-to-Earth) SPACE RESEARCH (Earth-to-space)		

Reason:

To provide the uplink communications support necessary to enable further manned exploration of the solar system, paired with the downlink band at 37-37.5 GHz.

RECOMMENDED U.S. PROPOSALS

GHz
59 - 64

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	59 - ~~64~~ 60.7	FIXED INTER-SATELLITE MOBILE 909 RADIOLOCATION 910 911	
MOD	~~59~~ 60.7 - ~~64~~ 60.8	~~FIXED~~ INTER-SATELLITE ~~MOBILE 909~~ ~~RADIOLOCATION 910~~ EARTH EXPLORATION-SATELLITE (passive) ~~911~~	
MOD	~~59~~ 60.8 - 64	FIXED INTER-SATELLITE MOBILE 909 RADIOLOCATION 910 911	

Reason:

To provide protection for passive microwave sensors observing the oxygen line at 60.792 GHz. This line is vital for the measurement of mesospheric temperatures. Absorption lines in the bands 54 - 59 GHz are broad and are distorted by the Zeeman effect on the magnetic field which causes a large error in the temperature retrievals. The Zeeman effect on the line at 60.792 GHz is negligible.

GHz
151 - 164

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	151 - ~~164~~ 156	FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	
MOD	~~151~~ 156 - ~~164~~ 158	~~FIXED~~ ~~FIXED-SATELLITE (space-to-Earth)~~ ~~MOBILE~~ EARTH EXPLORATION-SATELLITE (passive)	
MOD	~~151~~ 158 - 164	FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	

Reason:

To provide protection for passive microwave sensors observing the atmospheric window at 157 GHz. The band around 157 GHz is vital for deriving water vapor profiles. Because of on-board transmitters operating at frequencies between 1.5 - 1.7 GHz, the central frequency must have room to be moved to avoid harmonics from these transmitters. The 157 GHz window provides higher quality data than windows in the 150 - 151 GHz or the 164 - 168 GHz bands.

CHAPTER VIII

Provisions Relating to Groups of Services and to Specific Services and Stations

ARTICLE 27

Terrestrial Radiocommunication Services Sharing Frequency Bands with Space Radiocommunication Services above 1 GHz

Section II. Power Limits

MOD 2509 (5) The limits given in Nos. 2502, 2505, and 2507 apply in the following frequency bands allocated to the fixed-satellite service, the meteorological-satellite service, the space research service, the space operations service, the earth exploration-satellite service and the mobile-satellite service for reception by space stations, where these bands are shared with equal rights with the fixed or mobile service:

1626.5	- 1645.5	MHz	(for countries mentioned in No. 730)
1646.5	- 1660	MHz	(for countries mentioned in No. 730)
2025	- 2110	MHz	
2200	- 2290	MHz	
2655	- 2690	MHz[1]	(for Regions 2 and 3)
5725	- 5755	MHz[1]	(for countries of Region 1 mentioned in Nos. 803 and 805)
5755	- 5850	MHz[1]	(for countries of Region 1 mentioned in Nos. 803, 805 and 807)
5850	- 7075	MHz	
7900	- 8400	MHz	

Reason:

In order to protect space-to-space operations in the bands 2025 - 2110 MHz and 2200 - 2290 MHz, these bands and their relevant services should be included in RR 2509, a provision that effectively limits the EIRP of stations in the fixed and mobile services.

ADD 2512 For the protection of the satellites operating in the inter-satellite service in the 25.25-27.50 GHz band, EIRP density of a terrestrial system should not exceed -36 dBw/Hz in any 1 MHz bandwidth.

Reason:

To protect satellites operating in the inter-satellite service in the 25.25-27.50 GHz band from harmful interference that might be caused by terrestrial systems. This value is reflected in section 3.2.1.3 of the JIWP Report. The 1 MHz reference bandwidth approximates the minimum receiver bandwidth of a data relay satellite.

ARTICLE 28

**Space Radiocommunication Services
Sharing Frequency Bands with
Terrestrial Radiocommunication Services above 1 GHz**

Section IV. Limits of Power Flux-Density from Space Stations

MOD 2558
Mob-877 b) The limits given in No. 2557 apply in the frequency bands listed in No. 2559 which are allocated to the following space radiocommunication services:

- meteorological-satellite service (space-to-Earth);
- space research service (space-to-Earth) (space-to-space);
- space operation service (space-to-Earth) (space-to-space);
- earth exploration-satellite service (space-to-Earth) (space-to-space);

for transmission by space stations where these bands are shared with equal rights with the fixed or mobile service, and to the

- radiodetermination-satellite service (space-to-Earth).

MOD 2559
Mob-87

1 525	- 1 530 MHz[1]	(for Regions 1 and 3)
1 530	- 1 535 MHz[1]	(for Regions 1 and 3, up to 1st January 1990)
1 670	- 1 690 MHz	
1 690	- 1 700 MHz	(on the territory of the countries mentioned in Nos. 740 and 741)
1 700	- 1 710 MHz	
2 025	- 2 110 MHz	
2 200 ~~2 290~~	- 2 300 MHz	
2 483.5	- 2 500 MHz	

Reason:

Consequential modifications as a result of upgrading to primary allocations the space research (space-to-space), space operation (space-to-space) and earth exploration-satellite (Earth-to-space) (space-to-space) services in the bands 2025-2110 MHz and 2200-2290 MHz.

MOD 2581 (8) Power flux-density limits between ~~31.0~~ 21.7 GHz and 40.5 GHz.

NOC 2582

MOD 2583 (b) The limits given in No. 2582 apply in the frequency bands given in No. 2584 which are allocated to the fixed-satellite service, the mobile-satellite service, the inter-satellite service

and the space research service for transmission by space stations where these bands are shared with equal rights with the fixed or mobile services

MOD 2584

21.7 - 22 GHz
22.55 - 23.55 GHz
25.25 - 27.50 GHz
31.0 - 31.3 GHz
34.2 - 35.2 GHz (for space-to-Earth transmissions under Nos. 895 and 896 on the territory of countries mentioned in No. 894)
37.0 ~~37.5~~ - 40.5 GHz

Reason:

To protect terrestrial services from harmful interference that might be caused by satellites operating in the inter-satellite service in the 21.7-22 GHz and 25.25-27.50 GHz bands. These proposed PFD values (relative to angle of arrival) are reflected in section 3.2.1.3 of the JIWP Report. In addition, the band 37.5-40.5 GHz should be amended to read 37.0-40.5 GHz to protect terrestrial services from harmful interference that might be caused by satellites operating in the space research service.

ARTICLE 29

Special Rules Relating to Space Radiocommunication Services

Section II. Control of Interference to Geostationary-Satellite Systems

ADD 2613A In the frequency bands 21.7-22 GHz, 22.55-23.55 GHz and 25.25-27.5 GHz, geostationary space stations in the inter-satellite service shall have the following restriction:

Whenever the emissions from geostationary satellites are directed to other geostationary satellites, the angular separation between such geostationary satellites, as measured from the center of the Earth, shall be no more than 120°.

Whenever the emissions from geostationary satellites are directed towards space stations at distances from Earth greater than that of the geostationary-satellite orbit, the boresight of the antenna mainbeam of the geostationary satellite shall not be pointed within 15° of any point on the geostationary-satellite orbit.

Reason:

1. The reason for the proposed 120° geocentric angle restriction between geostationary satellites is to protect data relay satellites and permanent space station proximity link operations from interference caused by transmissions between geostationary satellite systems. Most low Earth-orbit spacecraft operate at an altitude between 300 and 1000 km. Current Data Relay Satellites (DRS) are capable of tracking spacecraft in altitudes up to 12,000 km, and interference protection should be provided for these spacecraft. To avoid harmful interference between inter-satellite service (ISS) (geostationary-to-geostationary) links and DRS links when low Earth-orbit spacecraft are at altitudes up to the 12,000 km, the angular separation between two geostationary space stations operating with each other would have to be no greater than approximately 100°. This angular separation is based upon an off-axis angle at the ISS station antenna (geostationary-to-geostationary) that assures sufficient antenna discrimination to protect both ISS (geostationary-to-geostationary) and DRS links. The antenna discrimination was calculated using the antenna pattern given in Figure 13 of CCIR Report 558.

Such a restriction would not permit fixed-satellite service (FSS) type systems with geostationary-to-geostationary links to have full Earth coverage with just three satellites. Therefore, to accommodate the use of geostationary-to-geostationary links by global FSS type systems using three satellites, we are proposing to limit the angular separation to no greater than 120°. In this case, interference would be avoided when low Earth-orbit spacecraft operate with altitudes up to 9,000 km.

2. The reason for the proposed 15° pointing restriction relative to the geostationary-satellite orbit is to protect geostationary inter-satellite service space stations from interference due to inter-satellite service space stations communicating with space stations beyond the geostationary-

satellite orbit.

CHAPTER XI

Maritime Mobile Service and Maritime Mobile-Satellite Service

ARTICLE 55

~~Operators'~~ Certificates for Personnel of Ship ~~S~~tations and Ship Earth Stations

Reason: To correct an oversight at the 1987 MWARC so as to align the title of the Article with Section titles.

Section I. General Provisions

SUP **3870**

Reason: The Certificates to be used will be held by a number of individuals aboard ship, making it no longer necessary to go to the trouble and expense to have photographs. The personnel who operate radio aboard ship will, for most administrations, not have that responsibility as a sole occupation, except in cases of distress. The radio license in the GMDSS may be an endorsement or a supplement to a deck officer's license so that a separate photo is not needed and in many cases would be duplicative. No. 3873 requires the date of birth.

(MOD) 3871 and 3872

Reason: Renumber as a consequence of SUP 3870.

MOD 3876 *d)* the issuing or recognizing administration.

Reason:

To eliminate the apparent conflict between Nos. 3860 Mob-87 and 3876.

Mob-87

Section IIA. Categories of Certificates for Personnel of Ship Stations and Ship Earth Stations Using the Frequencies and Techniques Prescribed in Chapter N IX and for Public Correspondence

MOD **3890A Mob-87** § 7A. (1) There are ~~four~~ two categories of certificates for personnel of ship stations and ship earth stations using the frequencies and techniques prescribed in Chapter N IX:

SUP **3890B Mob-87**

SUP **3890C Mob-87**

(MOD) **3890D Mob-87** ~~c)~~ a) General Operator's Certificate;

(MOD) 3890E
Mob-87

~~d)~~ b) Restricted Operator's Certificate.

(MOD) 3890F
Mob-87

(2) The holder of one of the certificates specified in Nos. ~~3890B, 3890C,~~ 3890D and 3890E may carry out the service of ship stations or ship earth stations using the frequencies and techniques prescribed in Chapter N IX.

Reason:

To delete the categories of certificates not recognized or used in the IMO Safety of Life At Sea Convention.

Mob-87

Section IIIA. Conditions for the Issue of Certificates for Personnel of Ship Stations and Ship Earth Stations Using the Frequencies and Techniques Prescribed in Chapter N IX and for Public Correspondence

SUP 3949A
Mob-87

SUP 3949AA
Mob-87

SUP 3949AB
Mob-87

SUP 3949AC
Mob-87

SUP 3949AD
Mob-87

SUP 3949AE
Mob-87

SUP 3949AF
Mob-87

SUP 3949AG
Mob-87

SUP 3949AH
Mob-87

SUP 3949AI
Mob-87

Reason:

The First-Class Radio Electronic Certificate is not a required part of the Global Maritime Distress and Safety System (GMDSS). Electronic maintenance aboard ship is only an option that will be subject to national decision according to the 1988 SOLAS Amendments. Most (two-thirds of shipping tonnage) of the maritime countries of the world have rejected on-

board maintenance as a requirement by presenting protocol statements either to the Final Acts of the World Administrative Radio Conference for the Mobile Services (Mob-87), Geneva, 1987, or to the Final Acts of the Plenipotentiary Conference, Nice, 1989.

SUP 3949B
Mob-87

SUP 3949BA
Mob-87

SUP 3949BB
Mob-87

SUP 3949BC
Mob-87

SUP 3949BD
Mob-87

SUP 3949BE
Mob-87

SUP 3949BF
Mob-87

SUP 3949BG
Mob-87

SUP 3949BH
Mob-87

SUP 3949BI
Mob-87

Reason:

The Second-Class Radio Electronics Certificate, like the First-Class, is not a required part of the GMDSS and is not included as a requirement of the 1988 SOLAS amendments.

(MOD) 3949C
Mob-87 ~~C.~~ A. General Operator's Certificate

(MOD) 3949CA
Mob-87 § ~~18C.~~ 18A. The General Operator's Certificate is issued to candidates who have given proof of the knowledge and qualifications enumerated below:

NOC 3949CB
Mob-87

NOC 3949CC
Mob-87

NOC 3949CD
Mob-87

NOC 3949CE
Mob-87

(MOD) 3949D ~~D.~~ B. Restricted Operator's Certificate
Mob-87

(MOD) 3949DA § ~~18D.~~ 18B. The Restricted Operator's Certificate is issued
Mob-87 to candidates who have given proof of the knowledge and qualifications enumerated below:

NOC 3949DB
Mob-87

NOC 3949DC
Mob-87

NOC 3949DD
Mob-87

NOC 3949DE
Mob-87

ARTICLE 56

Mob-87 **Personnel of Stations in the Maritime Mobile and the Maritime Mobile-Satellite Service**

Mob-87 **Section I. Personnel of Coast Stations and Coast Earth Stations**

NOC 3979 MOB-87 § 1. Administrations shall ensure that the staff on duty in coast stations and in coast earth stations are adequately qualified to operate the stations efficiently.

Reason:

To ensure adequate safety is provided.

Mob-87 **Section III. Class and Minimum Number of Personnel for Ship Stations and Ship Earth Stations Using the Frequencies and Techniques Prescribed in Chapter N IX and for Public Correspondence**

NOC 3987 Mob-87 § 4. Administrations shall ensure that the personnel of ship stations and ship earth stations are adequately qualified to enable efficient operation of the station, and shall take steps to ensure the operational availability and maintenance of equipment for distress and safety communications in accordance with the relevant international agreements.

NOC 3988 Mob-87 § 5. An adequately qualified person shall be available to act as a dedicated communications operator in cases of distress.

Reason:

To ensure adequate safety is provided by qualified individuals.

NOC 3989 Mob-87 § 6. The personnel of ship stations for which a radio installation is compulsory under international agreements and which use the frequencies and techniques prescribed in Chapter N IX shall, with respect to the provisions of Article 55, include at least:

Reason:

To ensure the Radio Regulations comport with the Convention on the Safety of Life At Sea.

SUP 3990 Mob-87

MOD 3991 Mob-87 ~~b)~~ a) for stations on board ships which sail ~~within~~ beyond the range of ~~MF~~ VHF coast stations: a holder of a ~~first- or second-class radio electronic certificate or a~~ general operator's

certificate;

MOD 3992 Mob-87 ~~c)~~ *b)* for ~~ship~~ stations on board ships which sail within the range of VHF coast stations: a holder of a ~~first- or second-class radio electronic certificate or a~~ general operator's certificate or a restricted operator's certificate.

Reason:

To align the Radio Regulations with the Convention on the Safety of Life at Sea and decisions of the International Maritime Organization.

NOC 3993 Mob-87 § 7. The personnel of ship stations for which a radio installation is not compulsory under international agreements and which use the frequencies and techniques prescribed in Chapter N IX shall be adequately qualified and certificated in accordance with the administration's requirements.

Reason:

To ensure adequate safety is provided by qualified individuals.

ARTICLE 61

Order of Priority of Communications in the Maritime Mobile Service and in the Maritime Mobile-Satellite Service

MOD 4441 The order for priority for communications in the maritime mobile service and the maritime mobile-satellite service shall be as follows, except where impracticable in a fully automated system in which, nevertheless, ~~category 1~~ distress, urgency and safety communications shall receive priority:

Reason:

Consequential to U.S. proposal ADD 726C in the bands 1530-1544 MHz and 1626.5-1645.5 MHz. These changes are intended to make Article 61 consistent with actions recommended by the maritime safety community and the proposal in ADD 726C, that "maritime mobile-satellite distress and safety communications, e.g. GMDSS, shall have priority access with real-time pre-emptive capability in the mobile-satellite service."

PROPOSALS WITH REGARD TO RESOLUTIONS AND RECOMMENDATIONS

MOD RESOLUTION NO. 517 ~~(HFBC-87)~~ (1992 WARC)

Transition from Double-Sideband (DSB) to Single-Sideband (SSB) Emissions in the HF Bands Allocated Exclusively to the Broadcasting Service

MOD The World Administrative Radio Conference for the ~~Planning of the HF Bands Allocated to the Broadcasting Service (Geneva, 1987),~~ Allocation of Spectrum (Spain, 1992),

ANNEX TO RESOLUTION NO. 517 (HFBC)

NOC **Procedure for the Transition from Double-Sideband (DSB) to Single-Sideband (SSB) Emissions in the HF Bands Allocated Exclusively to the Broadcasting Service**

MOD 1. The immediate introduction of SSB emissions is encouraged. ~~i.e., the transition period starts immediately.~~

MOD 2. All DSB emissions shall cease not later than ~~31 December 2015~~ 30 June 2007, at 2359 hours UTC (see also *resolves* 2 in the body of the Resolution).

NOC 3. SSB emissions shall comply with the characteristics specified in Appendix 45 to the Radio Regulations.

MOD 4. Until ~~31 December 2015~~ 30 June 2007, 2359 UTC, SSB emissions intended for reception by DSB receivers with envelope demodulation, as well as by SSB receivers with synchronous demodulation, shall have a carrier reduction of 6 dB relative to peak envelope power.

MOD 5. After ~~31 December 2015~~ 30 June 2007, 2359 hours UTC, only SSB emissions with a carrier reduction of 12 dB relative to peak envelope power.

MOD 6. Until ~~31 December 2015~~ 30 June 2007, 2359 hours UTC, whenever an administration replaces its DSB by an SSB emission, it shall ensure that the level of interference is not greater than that caused by its original DSB emission (see also Appendix 45 to the Radio Regulations and Recommendation 517 (HFBC-87)).

Reason:

The early use of SSB is essential in order to provide the HFBC spectrum needs while minimizing the impact upon the fixed service. The use of SSB increases spectrum efficiency with available technology and responds to *resolves* 2 of Resolution 517. Resolution 517 is on the 1992 WARC agenda as a part of Recommendation 511.

MOD

RESOLUTION No. 703

MOD

Relating to the Calculation Methods and Interference Criteria Recommended by the CCIR for Sharing Frequency Bands Between Space Radiocommunication and Terrestrial Radiocommunication Services or Between Space Radiocommunication Services[1]

MOD The World Administrative Radio Conference, ~~Geneva, 1979~~ Spain, 1992,

considering

NOC a)

NOC b)

NOC c)

NOC d)

MOD e) That CCIR Plenary Assemblies are held ~~triennially~~ frequently and with regularity, whereas administrative radio conferences, which are competent to modify the Radio Regulations making substantial use of CCIR Recommendations, are in practice held less frequently and with much less regularity;

ADD f) that the CCIR has adopted a procedure for the approval of Recommendations between Plenary Assemblies;

(MOD) ~~f)~~ g) that the International Telecommunication Convention ~~Malaga-Torremolinas, 1973)~~ recognizes the right of Members of the Union...

is of the opinion

MOD a) that subsequent ~~Plenary Assemblies~~ decisions of the CCIR are likely to make further changes in the recommended calculation methods and interference criteria;

NOC b)

NOC c)

invites the CCIR

SUP [1] ~~Replaces Resolution No. Spa2-6 of the World Administrative Radio Conference for Space Telecommunications, Geneva, 1971.~~

MOD a) to request its Study Groups to prepare, at their final meetings before the Plenary Assembly, a provisional list identifying relevant parts of approved new or revised CCIR Recommendations and drafts of revised and new CCIR Recommendations affecting the calculation methods and the interference criteria, and also those specific sections of the Radio Regulations to which they are applicable, relating to sharing between space radiocommunication and terrestrial radiocommunication services, or between space radiocommunication services;

MOD b) to request the Director of the CCIR to forward this list together with texts of approved new or revised CCIR Recommendations and texts of ~~these~~ drafts of revised ~~and~~ or new CCIR Recommendations to administrations and to the IFRB within thirty days following the final Study Group meetings;

resolves that

MOD 1. the IFRB shall immediately distribute the information mentioned in invites b) above to all administrations, so that it reaches them as soon as possible before the convening of the subsequent Plenary Assembly. This should be accompanied by a notice indicating that the enclosed texts have already been approved by the CCIR between Assemblies or are subject to approval at the next CCIR Plenary Assembly;

MOD 2. a) each CCIR Plenary Assembly~~, having adopted any or all of the relevant Recommendations and approved the appropriate portions of the list mentioned in invites a) above,~~ should arrange for the Secretary-General to be informed of the list mentioned in invites a) above, and those Recommendations which affect the appropriate calculation methods and the interference criteria to be employed;

NOC b)

NOC 3.

NOC 4.

NOC 5.

NOC 6.

NOC 7.

NOC 8.

NOC 9.

Reason: To bring Resolution 703 into line with the approval process adopted by the CCIR in compliance with No. 222 of the International Telecommunication Union Convention, approved by the Conference of the Plenipotentiaries (Nice, 1989).

RECOMMENDED U.S. PROPOSALS

ADD

RESOLUTION NO. AAA

Relating to Implementation of Wind Profiler Radars at Frequencies Near 50 MHz, 400 MHz and 1 GHz

The World Administrative Radio Conference, Spain, 1992

referring to

a request to the Director of the CCIR and Chairman of the IFRB from the Secretary-General of the World Meteorological Organization, in May, 1989, for advice and assistance in the identification of appropriate frequencies near 50 MHz, 400 MHz, and 1 GHz in order to accommodate allocations and assignments for wind profiler radars;

considering

a) that many administrations plan to deploy wind profiler radars at sites dispersed over large geographical areas in order to improve meteorological predictions, support studies of the climate, and enhance the safety of navigation;

b) that the CCIR established Questions [AB/2] and 65/8 to promulgate the relevant studies;

c) that the characteristics of wind profiler radars differ substantially from those of other meteorological aids;

d) that some experimental wind profiler radars are operating in the 402-406 MHz band, but these radars cause harmful levels of interference to the COSPAS-SARSAT system for distress alerting in the 406.0-406.1 MHz band;

e) that a total wind profiler system may require frequencies not only in the 400 MHz region but also frequencies near 50 MHz and around 1 GHz;

f) Recommendation ZZZ;

considering further

that the International Maritime Organization has incorporated the COSPAS-SARSAT system in the Global Maritime Distress and Safety System;

recognizing

that frequencies in the 400 MHz region are preferred for measurements of winds at altitudes that are of the greatest general interest;

resolves

that the next competent world administrative radio conference consider the matter of appropriate allocations for accommodation of wind profiler radars;

invites the CCIR

to continue its studies of the characteristics and requirements of wind

profiler radars and make Recommendations as to the technically suitable frequency bands and associated standards and frequency sharing criteria necessary for compatibility with the services that may be affected;

urges administrations

to avoid making frequency assignments to wind profiler radars in the 402-406 MHz band.

invites the Administrative Council

to place this matter on the agenda of the next competent world administrative radio conference.

Reason:

To call for a future world administrative radio conference to consider frequency allocations to the wind profiler radar systems and continuance of current CCIR studies regarding wind profiler radars.

ADD

RESOLUTION NO. BBB

Relating to Implementation of the Changes in Allocation to the Broadcasting Service in the Bands Between 5 730 kHz and 19 680 kHz

The World Administrative Radio Conference, Spain, 1992,

considering

a) that parts of frequency bands between 5 730 kHz and 19 680 kHz that were previously allocated on an exclusive or shared basis to the fixed service or fixed and mobile service have been re-allocated to the broadcasting or amateur services;

b) that existing fixed and mobile assignments must be removed progressively from those re-allocated bands to make way for the broadcasting or amateur services;

c) that the assignments to be removed termed "displaced assignments", must be re-accommodated in the same frequency band;

recognizing

the difficulties facing administrations and the IFRB during the period of transition from the previous allocations to those made by this Conference;

resolves

1. that the transitional procedure in Annex A to this Resolution shall be used for the purpose of ensuring an orderly and equitable implementation of the changeover from the previous allocations to those made by this Conference;

2. that the provisions of No. 1242 and the associated provisions of Article 12 concerning the examination and recording in the Master Register of assignments in the bands between 5 730 kHz and 19 680 kHz allocated on an exclusive or shared basis to the fixed service or fixed and mobile service shall be suspended from 1 January 1995 to 30 June 1997;

3. that the interim procedure in Annex B to this Resolution shall be used for the purpose of dealing with any urgent new frequency assignments in the relevant bands during the period of suspension of the provisions of Article 17 as specified in resolves 2;

4. that the review procedure in Annex C to this Resolution shall be used for the purpose of examining any urgent new assignment notified during the period of suspension of the provisions of Article 12 as specified in resolves 2;

invites administrations

to cooperate by not submitting notices for assignments in the relevant bands during the period of suspension of the provisions of Article 12 as specified in resolves 2, except for urgent new assignments to be dealt with under the interim procedures of Annex B and C.

requests the IFRB

not to examine any notices in the relevant bands under Article 12 during the period of suspension of the provisions of that Article as specified in resolves 2, other than those notices requesting deletions of existing assignments.

ANNEX A TO RESOLUTION NO. BBB

Transitional Procedure for the Selection and Approval of Replacement Assignments

PART I - PREPARATORY PHASE

Section I. Preparation and Publication by the IFRB of Consolidated Proposals for Replacement Assignments

1. For the purpose of this Resolution, the term "displaced assignment" means a frequency assignment to a station in the fixed service or mobile service in the parts of the bands re-allocated from the fixed service or fixed and mobile service to the broadcasting or amateur services for which a replacement assignment shall be found in accordance with this Resolution. The expression "class of operation A (or B or C)" refers to the entry in column 7B of the Master Register (see RR 1222).

2. The Board, as soon as possible after completion of the procedure in Annex D, shall prepare consolidated proposals for replacements for all displaced assignments listed in the Provisional Section of the Master Register (see Annex D) in the bands between 5 730 kHz and 19 680 kHz which the World Administrative Radio Conference, Spain, 1992, has re-allocated from the fixed service or fixed and mobile service to the broadcasting or amateur services.

3. The displaced assignment shall be treated in the order of the date recorded in Column 2d of the Provisional Section of the Master Register. Furthermore, all displaced assignments which have the same Column 2d date shall be treated in the following order:

1) assignments for national use;

2) assignments for international use.

In the application of this provision, the displaced assignments shall be processed in batches without any priority being applied to the assignments of any administration.

4. The displaced assignments of class of operation C shall not be treated until all displaced assignments of class of operation A or B have been satisfied.

5. Displaced assignments of class of operation C shall be as far as possible evenly distributed throughout the bands that continue to be allocated to the fixed service or fixed and mobile service.

6. The Board, in complying with the provisions of this Section, shall for the purposes of protecting existing recorded assignments employ only the Master Register reconstructed in accordance with the procedure in Annex D.

7. The Board, on 1 July 1996, shall send to each administration a document listing all the assignments concerning that administration, identifying those that were recorded in the Provisional Section of the Master Register, and those proposed as replacements.

Section II. Examination and Approval of Proposed Assignments

8. Each administration, upon receipt of the document specified in paragraph 7, shall acknowledge receipt and shall then examine the proposed replacement assignments contained therein with regard to their acceptability, following which the administration shall advise the Board as soon as possible

- of its agreement; or

- which of the proposed assignments it finds unacceptable.

In the latter case, the administration shall inform the Board, as quickly as possible, of its reasons therefor.

9. The Board shall examine the responses under paragraph 8 and shall try, preferably by applying small adjustments, to satisfy the administration concerned with respect to the proposed assignments it found unacceptable. The Board shall do so in the following way:

- the Board shall collect all responses received under paragraph 8 within six months after 1 July 1996, and process them together and without any priority being applied to the reply of any administration; and then

- the Board shall collect all responses received under paragraph 8 in the period from six months to nine months after 1 July 1996, and then process this second batch in the same manner as described above for the first batch.

10. The procedure described in this Section shall terminate on 1 July 1997.

Section III. Subsequent Action by the Board

11. The Board, on termination of the procedure prescribed by Sections I and II of this Annex, shall insert in the Master Register all replacement assignments that have been agreed by administrations, with annotations to indicate:

- that they shall have the status as provided in Annex D; and

- their provisional nature in accordance with No. 1311.

12. The Board shall, for all assignments mentioned in paragraph 11, insert in Column 2d of the Master Register the appropriate date according to Annex D.

13. The Board shall then publish, in recapitulatory supplements to the International Frequency List, all replacement assignments made in accordance with the procedure prescribed in Part I of this Annex.

14. The Board, on publication of the supplements prescribed in paragraph 13, shall inform by telegram any administration having outstanding displaced assignments of class of operation A which have not been satisfied.

Section IV. Implementation of Article 12

15. As from 1 July 1997, the provisions of Article 12 shall apply to frequency bands allocated to the fixed service and fixed and mobile service between 5 730 kHz and 19 680 kHz.

16. Following that date, an administration, having been informed by the Board under paragraph 14 that certain of its displaced assignments have not been replaced under this transitional procedure, shall be free to select new assignments taking into account the assignments recorded in the Master Register under paragraph 11, and shall submit new notices to the Board in accordance with Article 12.

PART II - TRANSFER PHASE

Section V. Subsequent Action by Administrations

17. An administration, having received and accepted replacements for its recorded assignments that were displaced by decisions of the World Administrative Radio Conference, Spain, 1992, shall effect the changeover from the old to the new assignment not later than 1 July 2007.

18. An administration shall promptly inform the Board of the date on which the changeover from an old to a replacement assignment takes place. The Board shall remove from that replacement assignment the special symbol placed in accordance with No. 1311 (see paragraph 11) in the Master Register, thus indicating that it has been implemented, and shall enter the date of the change over in Column 2c. The date in Column 2c, originally recorded with the displaced assignment, shall be entered in the Remarks Column.

19. 1) An administration having effected the change to a replacement assignment of class of operation A, and having experienced harmful interference or having received a complaint of harmful interference involving another class of operation A assignment:

a) shall make every effort with any other administration concerned to resolve the problem, and, if unsuccessful,

b) may select and submit to the Board an alternative replacement assignment. On request from an administration, the Board shall assist in the application of provision 19.1b) or 19.2.

2) An administration, having effected the change to a replacement assignment of class of operation B and having experienced harmful interference for this class of operation, may select and submit to the Board an alternative replacement assignment. On request from an administration, the Board shall assist in the application of provision 19.1b) or 19.2.

20. Following a favourable finding by the Board on the replacement assignment selected under paragraph 19.1)b) or 19.2), the administration shall be

entitled to retain the Column 2d date of the Master Register, against that assignment.

Section VI. Relevance of Dates in the Master Register

21. The relevance of the dates related to displaced assignments is referred to in Annex D and Article 12.

ANNEX B TO RESOLUTION NO. BBB

Interim Procedure Concerning Notices Relating to Assignments in the Bands Between 5 730 kHz and 19 680 kHz Allocated to the Fixed Service and Fixed and Mobile Service

1. During the period between 1 January 1995 and 30 June 1997, an administration, having an urgent requirement which cannot possibly be delayed until the end of that period, may notify a new assignment in the bands between 5 730 kHz and 19 680 kHz allocated on an exclusive or shared basis to the fixed or mobile service. Such notices shall contain the information listed in the appropriate section of Appendix 1.

2. An administration submitting a notice in accordance with paragraph 1 above shall be deemed to accept that its assignment:

a) shall be of an interim nature; and

b) shall be subject to the review procedure contained in Annex C to this resolution and shall then be modified if necessary to conform to the results of that review; and

c) shall not cause harmful interference to any assignments recorded in the Master Register that are entitled to protection.

3. The Board, upon receipt of a complete notice under paragraph 1, shall examine it with respect to No. 1240 and shall return to the notifying administration any notice not complying with that provision together with the reasons for this action.

4. Notices in conformity with No. 1240 shall be included in a special section of the weekly circular, where they shall be annotated to show that they are subject to both the interim and review procedures contained in this Annex and Annex C to this Resolution respectively. Assignments notified under No. 1218 shall additionally be annotated to that effect.

5. The Board shall compile and maintain a Special List of all notices dealt with under paragraph 4.

ANNEX C TO RESOLUTION NO. BBB

Review Procedure Concerning Notices Relating to Assignments for Stations of the Fixed and Mobile Service in the Bands Between 5 730 kHz and 19 680 kHz

1. The Board, commencing on 1 July 1997, shall examine under the appropriate provisions of Article 12 all interim assignments contained in the Special List compiled in accordance with Annex B to this Resolution with a view to recording them in the Master Register.

2. For the purposes of this examination, interim assignments shall be processed without priority being given to the assignments of any administration; however, assignments notified under No. 1218 shall be treated first.

3. All interim assignments shall be examined by the Board with respect to the probability of harmful interference from or to assignments entered in the Master Register on a provisional basis as a result of the application of Annex A to this Resolution. Depending on the findings of the Board subsequent to this examination, further action shall be as follows:

4. Favourable finding with respect to paragraph 3 above

1) The interim assignments notified under No. 1218 shall be recorded in the Master Register, and the date 1 July 1997 shall be entered in Column 2d.

2) The other interim assignments shall be examined under No. 1242 with respect to frequency assignments recorded in the Master Register at the date of commencement of the interim procedure described in Annex B to the present Resolution. Depending on the findings of the Board, the appropriate provisions of Article 12 shall be applied. When such assignments are to be recorded, the date 1 July 1997 shall be entered in Column 2d.

5. Unfavourable finding with respect to paragraph 3 above

The Board shall, having regard to the class of operation of assignments, and the contents of the reconstructed Master Register, propose suitable replacement assignments and enter them on a provisional basis with the date of 1 July 1997 in Column 2d.

6. The Board shall, upon completion of this review, compile a Temporary List of recorded and proposed replacement assignments and publish it as an Annex to its weekly circular. A copy of this List, together with a national extract thereof, shall be sent to each administration having interim assignments in the Special List mentioned in paragraph 1 of this Annex.

7. An administration, upon receipt of the List mentioned in paragraph 6, shall consider the proposed replacements for its interim assignments and shall, within five months of the date of publication of the Temporary List, inform the Board whether the proposed assignments are acceptable. If the proposed assignments are not acceptable, the administration shall give the reasons therefor.

8. Upon acceptance of a proposed assignment, the administration shall indicate the latest date of bringing into use. This date shall be within one year of the publication of the Temporary List.

9. The Board shall examine the replies under paragraph 7 and shall try, if necessary by applying small adjustments, to satisfy the administration concerned with respect to the proposed assignments it found unacceptable and propose alternative frequencies. Simultaneously, the Board shall replace the appropriate provisional entry by the new proposed frequency.

10. If, on 1 July 1998, provisional entries made under paragraph 5 or 9 have not been accepted by the administration concerned, the Board shall replace these entries by the corresponding interim assignment appropriately annotated. As from that date neither the Special List nor the Temporary List shall be taken into consideration.

11. An administration, having an interim assignment for which no acceptable replacement assignment has been found, shall be free to select a new replacement and shall forward a new notice under the provisions of Article 12. Upon request from an administration, the Board shall assist in the application of this provision.

ANNEX D TO RESOLUTION NO. BBB

Procedure for the Revision of Entries in the
Master International Frequency Register of
Displaced Assignments from Bands Re-Allocated to the
Broadcasting or Amateur Service

1. The Board shall extract from the Master Register and shall, as soon as possible after 1 January 1993, forward to each administration an individual National List[1] of all assignments recorded in the Master Register on behalf of that administration or for which notices have been received prior to that date in the bands re-allocated to the broadcasting or amateur service (RR521B and RR528C).

2. Each administration, upon receiving the List mentioned in paragraph 1 above, shall so inform the Board by telegram. An administration not receiving its National List by 1 April 1993 shall promptly inform the Board, which shall forthwith send to that administration a further copy of the National List. The Board shall ensure that every administration has received the National List pertaining to its own assignments.

3. Each administration, after having acknowledged receipt of its National List, shall delete from it any of the entries no longer required and shall return its annotated National List to the Board as quickly as possible and in any event not later than 31 March 1994. The Board shall send to each administration an acknowledgement of receipt of its annotated National List.

4. On 1 October 1993, the Board shall publish a provisional section of the Master Register relating solely to the assignments in the bands allocated exclusively to the fixed and fixed and mobile service in the bands between 5 730 kHz and 19 680 kHz. This section shall contain all assignments shown in the National Lists as updated by administrations and those shown in the National Lists which have not been returned to the Board, excluding those assignments with an unfavourable finding with respect to No. 1240, without reference to No. 342. The assignments in this provisional section shall be annotated as follows:

1) all assignments in the parts of bands re-allocated to the

[1] The Board shall determine by prior enquiries the number of copies of the National List to be sent to each administration. The National List shall be prepared in the format of the International Frequency List but the form in which the List is forwarded may, at the request of individual administrations and with the agreement of the Board, be varied to suit different circumstances.

broadcasting or amateur service shall bear the symbol "RES BBB" in Column 13c indicating that they are assignments for which replacement assignments shall be found in accordance with this Resolution, retaining the date and status afforded in 4.2) and 4.3), below;

2) for Lists returned to the Board, the date entered in Column 2d shall be same date contained in the Master Register for that assignment;

3) for Lists not returned to the Board, the date entered in Column 2d shall be 1.1.95.

5. As soon as possible after 1 January 1995, the Board shall:

1) publish a supplement to the provisional section of the Master Register containing those assignments for which notices were received between 1 January 1993 and 31 December 1994 and recorded in the Master Register;

2) send to administrations a copy of their National list;

3) incorporate in the Master Register the provisional section mentioned in paragraph 4 including the assignments in paragraph 5.1) above in replacement of the corresponding entries in the frequency bands concerned.

6. Following completion of the action described in this Annex, the Board shall publish a report showing the results obtained from the operation of this procedure.

Reason:

To provide a reaccommodation procedure for those services displaced by additional allocations for the HF broadcasting service.

ADD

RESOLUTION NO. CCC

Relating to Primary Service Requirements for Meteorological Satellites in the Bands 401-403 MHz

The World Administrative Radio Conference, Spain, 1992,

considering

a) that many administrations use frequencies in the bands 401 to 402 MHz and 402 to 403 MHz for reporting to satellites from airborne, land-based and maritime data collection platforms (DCP's);

b) that the CCIR has conducted studies of the characteristics, requirements and sharing criteria necessary for compatibility with the services that are shared with these systems, the results are reported in CCIR Report 541-2 and Report 514-2;

c) that meteorological-satellite service in the bands 401 to 402 MHz and 402 to 403 MHz are secondary to other services in these bands and that in order for continuous reliable observations to be made, it is essential that transmission of the data be achieved without harmful interference;

resolves

that the next competent world administrative radio conference examine the allocation to the meteorological-satellite service operations in the bands 401 to 402 MHz and 402 to 403 MHz with the intent of upgrading the allocation;

invites the Administrative Council

to take the necessary action to place this matter on the agenda of the next competent world administrative radio conference.

Reason:

To call for a future conference to consider primary allocations to the meteorological-satellite service in the 401 to 403 MHz range.

ADD

RECOMMENDATION NO. ZZZ

Relating to Interim Implementation of Wind Profiler Radars at Frequencies Near 400 MHz

The World Administrative Radio Conference, Spain, 1992

considering

a) that many administrations plan to deploy wind profiler radars at sites dispersed over large geographical areas in order to improve meteorological predications, support studies of the climate and enhance the safety of navigation;

b) that the CCIR is conducting studies under Questions [AB/2] and 65/8 to determine the characteristics and requirements of wind profiler radars in order to make Recommendations as to suitable frequency bands and associated standards and frequency sharing criteria necessary for compatibility with the services that may be affected;

c) that frequencies in the 400 MHz region are preferred for measurements of winds at altitudes that are of the greatest general interest, but that implementation of wind profiler radars in the 402-406 MHz band poses an unacceptable risk of interference to the COSPAS-SARSAT system for distress alerting;

d) that in relation to the need to protect satellite receivers, operation of wind profiler radars in accordance with No. 342 requires special attention to the cumulative effects of all such operations in the large areas that are within view of the satellites;

e) Resolution AAA:

noting

that some administrations have found that wind profiler operations near [4XX MHz] will be compatible with existing systems;

recommends

that administrations consider frequencies near [XXX MHz] in making assignments to wind profiler radars until such time as the CCIR develops applicable Recommendations.

Reason:

To provide for the interim implementation of wind profiler radar systems and the continuance of current CCIR studies regarding wind profiler radars, while providing protection for the COSPAS-SARSAT system.

Appendix B--Commenting Parties in the WARC-92 Proceeding

AAD Microwave Services Corp.
Advanced Mobilecomm, Inc.
Advanced Television Systems Committee
Adventist Broadcasting Service, Inc.
Adventist World Radio
Aeronautical Radio, Inc.
Aerospace & Flight Test Radio Coordinating Council
AFRISPACE, Inc.
Aircraft Owners and Pilots Association
Air Transport Association of America
Amana Refrigeration, Inc.
American Association of State Highway and Transportation Officials
American Institute of Merchant Shipping
American Mobile Satellite Corporation
American Personal Communications
American Petroleum Institute
American Radio Relay League
American SMR Network Association
American Technical Systems Committee
American Telephone and Telegraph Company
Amtech World Corporation
Apple Computer, Inc.
APV Baker Limited
ARNAV Systems, Inc.
Associated Public-Safety Communications Officers, Inc.
Association for Broadcast Engineering Standards, Inc.
Association for Maximum Service Television, Inc.
Association of American Railroads
Association of Home Appliance Manufacturers
Association of Independent Television Stations, Inc.
Association of North American Radio Clubs
Dennis Atkeson
Aurora Police Department
Bell Communications Research, Inc.
Bellevue Hospital Center
City of Bell Gardens Police Department
BellSouth Corporation
State of California, Department of General Services,
Telecommunications Division
California Public-Safety Radio Association, Inc.
Anna L. Case
Brian Cassidy
Catholic Telecommunications Network
Catholic TV Network Affiliates Association
CBS, Inc.
Cellular Telecommunications Industry Association
Cem Corporation
Chicago Fire Department
Christian Science Monitor Syndicate, Inc.
Christian Science Publishing Society

Cober Electronics, Inc.
State of Colorado--Division of Telecommunications
Comband Technologies, Inc.
Communications Satellite Corporation
Comsat Video Enterprises, Inc.
Jack Corum, Sheriff, Liberty, MS.
Cylink Corporation
City Of Dallas, Texas
Department of General Services, Division of Public Structures
Digital Microwave Corporation
Carolyn Dodson, Inc.
Dow Chemical
East Baton Rouge Parish, Louisiana
Ellipsat Corporation
Emergency Medical Services, Inc.
Mehmet Emiroglu
Energetics Satellite Corporation
Enersyst Development Center, Inc.
Ericsson Corporation
F Corporation
Family Stations, Inc.
Farmington Police Department
Federal Express
Florida Department of General Services
Ford Motor Company's Electronics Division
City of Fremont Fire Department
Fusion Systems Corporation
Gary Gaulin
GE American Communications, Inc.
GEC Plessey Telecommunications, Ltd. and Stromberg-Carlson Corporation
General Instrument Corporation
General Motors Research Corporation
George Mason University Foundation, Inc.
Geostar Corporation
Global-Wulfsberg Systems
Golden Valley Microwave Foods, Inc.
Grumman Corporation
GTE Service Corporation
Gulf South Broadcasters, Inc.
Harris Corporation--Farinon Division
High Adventure Ministries
HJCB World Radio
HSN Communications, Inc.
Hughes Aircraft Company
IDB Communications Group, Inc.
Indiana Dept. of Administration--Information Services Division
International Association of Chiefs of Police
International Business Machines Corporation
International Microwave Power Institute
International Monitoring Association for Student & Teachers
International Radio Satellite Corporation

International Technologies, Inc.
Iowa Public Broadcasting Board, et al.
George Jacobs & Associates, Inc.
James River Corporation
Jefferson Parish, Louisiana
Michael R. Kelley
Benjamin Krepp
David Kurlander
KUSW Worldwide Radio
Stanley Leinwoll
Lewisville Police Department
Robert W. Lilley, Ph. D.
Litel Telecommunications Corporation
Livermore Police Department
Local Area Telecommunications, Inc.
Chuck Longman
City of Los Angeles
Los Angeles County Sheriff's Department
Major Cities Chiefs Association
Gregory Miles Mann
Maryland Department of General Services
McCaw Cellular Communications, Inc.
Metricom, Inc.
Michigan Department of Management & Budget
Microwave Corporation
Minneapolis Police Department
Mississippi Central Data Processing Authority--Bureau of Telecommunications
Mobile Marine Radio, Inc.
Motorola, Inc.
National Academy of Sciences--National Research Council's Committee on Radio Frequencies
National Aeronautics and Space Administration
National Association of Broadcasters
National Association of Business and Educational Radio, Inc.
National Association of Shortwave Broadcasters
National Association of State Telecommunications Directors
National Broadcasting Company, Inc.
National ITFS Association
National Oceanic Industries Association
National Public Radio
NCR Corporation
Nevada State Communications Board
New Jersey Department of the Treasury--Office of Telecommunications
City of New York Parks & Recreation
Noroton Heights Fire Department, Inc.
Norris Satellite Communications, Inc.
North Dakota--State Radio Communications
Northern Telecom, Inc.
NYNEX Corporation
NYNEX Mobile Communications Company

NYNEX Telephone Companies
Ohio Educational Broadcasting Network Commission
Ohio University Avionics Engineering Center
Omnipoint Data Co., Inc.
Orbital Communications Corporation
Pacific Bell and Nevada Bell
Papillion Volunteer Fire & Rescue Department
Qualcomm, Inc.
Radiant Systems, Inc.
Radio Amateur Satellite Corporation
Radio-Electronics Officers Union and American Radio Association
Radio Satellite Corporation
Radio Technical Commission for Maritime Services
Raytheon Company
Richt Roc Group
Rockwell International Corporation
Rocky Mountain Corporation for Public Broadcasting
Rose Communications, Inc.
Daniel L. Ross
Saga Communications, Inc.
Satellite Broadcasting and Communications Association
Satellite CD Radio, Inc.
Schwan's Sales Enterprise, Inc.
Sea-Land Service, Inc.
Sems, Inc.
Shannondale Wireless
Sophron Foundation
South Carolina Division of Information Resource Management
State of South Dakota--Division of Criminal Investigation
Southeast Ohio Emergency Medical Services, Inc.
Southwestern Bell Corporation
Space Systems/Loral
Stanford Telecom
STARSYS, Inc.
Strother Communications, Inc.
Super Talkers of Pennsylvania
Tanford Telecom
Leslie Taylor Associates
Telecommunications Industry Association, Mobile Communications Division
Telecommunications Systems
Telocator
Thomaston Police Department
Utilities Telecommunications Council
Union Pacific Railroad Company
Union Township Schools
United Parcel Service, Inc.
United States Air Force Frequency Management Center
United States Satellite Broadcasting Company, Inc.
United Technologies Automotive, Inc.
University of Maryland
University of Washington

US West, Inc.
State of Utah, Department of Public Safety, Telecommunications Division
Utilities Telecommunications Council
Voice of America
Voice of Hope World Network
Volunteers in Technical Assistance, Incorporated
Town of Waterbury, Connecticut
WCI--Microwave Division
City of West Haven, Department of Police Services
Town of Weston, Connecticut
Town of Wethersfield, Connecticut
Westport Police Department
West Virginia Department of Health and Human Resources
Carroll F. White
WHMB TV-40
Town of Wilton, Connecticu
Wild Goose Association
Wireless Cable Association
Wisconsin Dept. of Administration
World Christian Broadcasting Corporation
World Radio TV Handbook
Wyoming Department of Administration and Fiscal Control--Telecommunications Division
Dr. Philip R. Yant

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 91-116

In the Matter of

AT&T COMMUNICATIONS — Transmittal No. 2872

Revisions to Tariff F.C.C. No. 15

Competitive Pricing Plan No. 15

ORDER

Adopted: May 21, 1991; Released: May 23, 1991

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. AT&T Communications (AT&T) filed Transmittal No. 2872 on January 30, 1991. This transmittal introduces AT&T's fifteenth Competitive Pricing Plan (CPP15) under AT&T Tariff F.C.C. No. 15, scheduled to become effective on May 30, 1991. According to AT&T, CPP15 constitutes its competitive response to an offer made by US Sprint Communications Company Limited Partnership (US Sprint) to Thomson Communication Services (Thomson). Petitions against this transmittal were filed by MCI Telecommunications, Inc., US Sprint Communications Company Limited Partnership, and the Competitive Telecommunications Association (CompTel).[1] For the reasons discussed below, we suspend Transmittal 2872 for the full five-month statutory period.

II. BACKGROUND

2. AT&T contends that this transmittal represents its competitive response to an offer made by US Sprint to provide telecommunications services at rates that are significantly below US Sprint's tariffed rates. According to AT&T, Thomson has expressed its intention to switch its business from AT&T to US Sprint unless AT&T counters US Sprint's offer. AT&T Transmittal No. 2872, Description and Justification (D&J) at 1-2. CPP15, would provide Thomson with a 10 percent monthly discount off each of the following services: SDN Expanded Volume Plan Part VI; Megacom 800; Basic 800 Service; and 800 ReadyLine. AT&T states that the average cost per minute for these services will be $0.1071. *Id.*, Bearden Affidavit at 5. Thomson is required to commit to 15 million minutes of SDN usage per year for two years in order to obtain the SDN discount. The term for CPP15 is two years. AT&T Tariff F.C.C. No. 15, Transmittal No. 2872, Section 17.1, 2nd Revised Page 46.

III. PLEADINGS

A. Petitions

3. CompTel and MCI incorporate by reference their pleadings and petitions against each prior Tariff 15 offering. *See* CompTel Petition at 2; MCI Petition at 4.

4. The petitioners argue that CPP15 fails to satisfy the competitive necessity test upon which AT&T relies as justification for its single customer discounts.[2] *See, e.g.*, CompTel Petition at 2; MCI Petition at 5. According to US Sprint, CPP15 fails to meet the first prong of the test because AT&T's pricing offers rates lower than the rates contained in US Sprint's offer to Thomson. US Sprint Petition at 3-4. US Sprint explains that its bid to Thomson was based on an annual commitment of 20 million minutes of domestic service and a 100,000 monthly commitment of international service at an average cost of $0.1580, not the 15 million minutes annually required by CPP15. If it had bid on the lower commitment for domestic services, argues US Sprint, its bid would have been $0.1098 per minute compared to AT&T's $0.1071 per minute. *Id.* at 4. Additionally, US Sprint contends that CPP15 fails to meet the second prong of the competitive necessity test because it is unduly discriminatory to offer these services to a single customer. *Id.* at 5. US Sprint charges that AT&T's statements that these plans will be available to other customers who have received substantially similar offers is vague and would create implementation problems. *Id.* The third prong of the competitive necessity test is also not met by AT&T, in US Sprint's view, because AT&T has not demonstrated that CPP15 will be profitable and not burden other ratepayers. *Id.* at 6.

5. MCI argues that the competitive necessity test does not justify AT&T's CPP15 offering because that test applies to services made available to classes of customers and not single customers. MCI Petition at 5-6. MCI disputes AT&T's claim that this plan is not limited to Thomson. MCI notes that AT&T's tariff specifies that in order to procure CPP15, a customer must have actually received an offer from a competing interexchange carrier. MCI argues that this eligibility requirement "effectively limits" CPP15 and as a consequence, that plan is only available to Thomson. *Id.* at 5, citing AT&T D&J, Bearden Affidavit at 5.

6. MCI further argues that CPP15 effectively bundles AT&T's 800 services with SDN to take advantage of AT&T's dominance in the 800 service market. *Id.* at 4. MCI contends that this bundling practice has been proscribed by the Commission. *Id.*, citing AT&T Communications, Inc., 5 FCC Rcd 3833 (Com.Car.Bur. 1990). *See also* US Sprint Petition at 4. MCI also disputes AT&T's contention that CPP15 is a new service and that, accordingly, a cost of service study is not required. MCI Petition at 6-7. MCI charges that these plans do not offer new services but merely price preferences for existing services. Therefore, says MCI, AT&T's reliance on the Commission's cost support rules for new services is improper. *Id.*

7. Finally, US Sprint charges that CPP15 constitutes an attempt by AT&T to circumvent price cap regulation by offering "nothing more than discounted SDN service" to Thomson. US Sprint Petition at 6. US Sprint suggests that the Commisson did not anticipate or consider the consequences of the selective transformation of price capped services into Tariff 15 offerings. *Id.* at 7. US Sprint argues

that these transfers will increase the likelihood of cross-subsidization. The solution, argues US Sprint, is to prohibit Tariff 15 offerings. *Id.*

B. AT&T Reply

8. AT&T contends that US Sprint's allegations that AT&T's offer to Thomson involves lower rates than those contained in the US Sprint offer is "meaningless." First, AT&T charges that US Sprint has not denied that its quoted rate for domestic services, *i.e.*, excluding international services, averages less than AT&T's $0.1071. AT&T Reply at 4. Second, AT&T contends that US Sprint's statement that the latter's rate offer would have been $0.1098 for a 15 million minute commitment is immaterial because that assertion does not identify the services or demand levels covered by that rate. *Id.* at 4.

9. AT&T argues that its provision for availability of CPP15 to other customers is entirely consistent with the competitive necessity doctrine. *Id.* at 7-8. AT&T also maintains that MCI and US Sprint make an invalid claim that the services offered as a part of CPP15 impermissibly bundle AT&T 800 services and other AT&T service. AT&T states that the services offered as a part of CPP15 are available either individually or in combination. *Id.* at 4-5. Finally, AT&T contends that the substantive provisions of the Communications Act apply to all carriers and not merely to carriers classified as dominant. *Id.* at 5-6. AT&T therefore concludes that if single-customer pricing is lawful for non-dominant carriers, then it is also lawful for AT&T. *Id.* at 7.

IV. DISCUSSION

10. We conclude, based on our review of the instant transmittal and the pleadings, that AT&T's offering raises significant issues that warrant investigation. Single-customer offerings raise serious questions of compliance with the prohibition against unreasonable discrimination established by the Communications Act. Yet, as the Commission observed at the time it initiated its investigation of the first Tariff 15 offering, the Holiday Rate Plan, "[l]egal precedent supports the view that otherwise discriminatory rates can be reasonable where justified by competitive necessity." [3] Determining whether AT&T may properly rely upon competitive necessity in this instance, however, requires further analysis and additional information from interested parties.

11. We also conclude that the issues raised by CPP15 warrant exercise of our discretion to suspend this transmittal pending investigation. We recognize that suspension is a severe regulatory action because it delays the implementation of service offerings. In deciding whether to suspend, we must balance the interests of ratepayers, the filing carrier, and the competitive process. On balance, we have decided that the potential for a violation of Section 202(a) of the Communications Act by the instant transmittal, and consequently the potential for harm to other ratepayers, outweighs any negative impact that suspension of these rates may have. Therefore, we conclude that the Commission's preference for avoiding unnecessary disruption of the competitive balance in the marketplace does not require that we refrain from suspending these transmittals.

12. We will designate the issues to be examined in this investigation in a future Order.

V. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to Sections 204(a) and 403 of the Communications Act of 1934, 47 U.S.C. §§ 204(a), 403, an investigation IS INSTITUTED into the lawfulness of the tariff revision filed by AT&T Communications in Tariff F.C.C. No. 15, Transmittal No. 2872.

14. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the instant tariff revision filed by AT&T Communications IS SUSPENDED until October 30, 1991.

15. IT IS FURTHER ORDERED that AT&T Communications SHALL FILE a supplement reflecting this suspension no later than five business days from the release of this Order. Special Permission No. 91-390 is assigned for this purpose.

16. IT IS FURTHER ORDERED that the petitions to reject AT&T Communications Transmittal No. 2872 filed by MCI Telecommunications, Inc., and US Sprint Communications Company Limited Partnership ARE DENIED.

17. IT IS FURTHER ORDERED that the petition to reject or suspend and investigate AT&T Communications Transmittal No. 2872 filed by the Competitive Telecommunications Association IS GRANTED to the extent indicated herein and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] MCI Petition To Reject, filed Feb. 14, 1991 (MCI Petition); US Sprint Petition To Reject, filed Feb. 14, 1991 (US Sprint Petition); and CompTel Petition To Reject or, in the Alternative, To Suspend and Investigate, filed Feb. 14, 1991 (CompTel Petition). AT&T replied to these petitions on February 25, 1991 (AT&T Reply).

[2] AT&T relies on the competitive necessity test described in the *Private Line Guidelines*. The *Private Line Guidelines* state that to justify a discriminatory rate on the grounds of competitive necessity, a carrier must show that:

> 1) an equal or lower priced competitive alternative -- a similar offering or set of offerings from other common carriers or customer-owned systems -- is generally available to customers of the discounted offering;
>
> 2) the terms of the discounted offering are reasonably designed to meet competition without undue discrimination; and
>
> 3) the volume discount contributes to reasonable rates and efficient services for all users. Private Line Rate Structure and Volume Discount Practices, CC Docket No. 79-246, 97 FCC 2d 923, 948 (1984).

[3] AT&T Communications, CC Docket No. 88-471, Memorandum Opinion and Order, 4 FCC Rcd 7712, 7713 (1988).

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BROADCAST TELEVISION IN A MULTICHANNEL MARKETPLACE

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EXECUTIVE SUMMARY

This study examines changes in the competitive situation of the television broadcasting industry from 1975 to 1990 and presents some predictions for the next decade.[1] Over the past fifteen years the range of broadcast, cable, and other video options available to the American viewer has increased dramatically. Broadcast television, however, has suffered an irreversible long-term decline in audience and revenue share, which will continue throughout the current decade.

In the next ten years, broadcasters will face intensified competition as alternative media, financed not only by advertising but also by subscription revenues, and offering multiple channels of programming, expand their reach and their audience. Television broadcasting will be a smaller and far less profitable business in the year 2000 than it is now. Although broadcasting will remain an important component of the video mix, small-market stations, weak independents in larger markets, and UHF independents in general will find it particularly difficult to compete, and some are likely to go dark. The analysis supports the conclusion that in the new reality of increased competition regulations imposed in a far less competitive environment to curb perceived market power or concentration of control over programming are no longer justified and may impede the provision of broadcast services.

THE 1975-1990 PERIOD

In 1975, the United States had three commercial broadcast television networks and no cable networks; cable television was solely a broadcast retransmission medium. Only 17 percent of television households subscribed to cable in 1976; over 56 percent subscribed in 1990. By 1990, there were four commercial broadcast networks and over 100 national and regional cable networks. The number of broadcast stations had increased by 50 percent, with independent stations accounting for three-quarters of the growth. The number of off-air stations available to the median household increased from six in 1975 to ten in 1990, and by 1990 94 percent of television households were located in markets with five or more television stations. In 1975, there were no home satellite dish systems and no home videocassette recorders (VCRs); in 1990, 3 percent of television households had home dishes and 69 percent owned VCRs.

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1 This paper presents only the views of members of the staff of the Office of Plans and Policy. It does not represent the views of the Commission or any individual Commissioner, and has not been considered by or voted upon by the Commission.

Expansion in the availability of outlets and programming has dramatically changed viewing patterns. The broadcast networks and their affiliates have been the big losers. The prime-time viewing share of the three major commercial networks plummeted from 93 in 1975 to 64 in 1990. The all-day three-network viewing share fell from 41 to 35 between 1984/85 and 1989/90. These declines have been accompanied by increased viewing of independent stations and cable networks. In recent years, pay cable and independent station viewing has leveled off, but basic cable viewing continues to grow. Overall, viewing of cable-originated programming rose from 14 percent to 26 percent of total viewing and from 24 percent to 39 percent of viewing in cable households. Thus, the decline in the broadcast share results from both increased cable penetration and increased cable viewing shares in cable households. While the tape rental business earns large revenues, the impact of tape rental on broadcast viewing has been small.

Competition has reduced television station profits, although the relative profitability of different categories of stations has remained unchanged. Network affiliates, on average, have much higher profits than independents. Indeed, independents apparently suffered losses on average in 1986-88. Also, VHF stations normally are more profitable than UHF stations and, if other factors are equal, large market stations are more profitable than small market stations. Large-market stations on average still earn very high profits. Even in large markets, however, independent stations may be unprofitable, particularly if there are several independent stations in a single market.

THE NEXT DECADE

During the next decade, television broadcasters will face increased competition from more and higher-quality alternatives and, consequently, broadcast television audience shares are likely to continue their gradual decline. Audiences and advertisers will find cable programming an increasingly good substitute for broadcast programming, and each major broadcast network will increasingly become one of a larger group of distributors, along with cable networks, Fox, and others.

Cable now passes over 90 percent of television households. While that fraction will rise slightly, increases in cable subscribership will come mostly from increased penetration of homes already passed. In 1990, 20 percent of homes not passed by cable owned home satellite dish systems. This fraction is likely to rise during the next decade. If the reception equipment costs are sufficiently low, and if programming is available, direct broadcast satellite (DBS) service also could have a substantial impact. DBS is likely to spread more rapidly in areas not passed by cable, which may have limited broadcast service. To the extent that satellite services proliferate in cabled areas, the impact on broadcast shares will almost certainly be negative. Not only will satellite services offer additional viewing options,

but they will exert competitive pressure on cable, resulting in lower cable rates and improved service.

The technological development with the greatest impact on the video marketplace in this decade will almost certainly be digital video signal compression, which will allow substantially expanded channel capacity. This capacity will be used in part for additional conventional services, but more importantly to provide time diversity, either through multiple feeds of conventional cable (or broadcast) networks or through "near video on demand" pay-per-view services. Compression will be introduced first in the satellite media, then in cable, and then, perhaps, in broadcasting.

Video advertising, the source of broadcasters' revenues, is likely to grow very slowly over the next decade, after an earlier period of rapid growth. The composition of video advertising will shift toward cable and national syndication and away from network and national spot. Consequently, television stations' overall share of advertising will fall further. The likelihood of continued rapid growth of cable advertising (national and local) is suggested by the fact that cable accounts for 6 percent of video advertising revenues but 22 percent of viewing on channels accepting advertising.

The effects of increased competition on broadcast television will be significant but vary among viewers and firms. Broadcast television stations, as a group, will suffer declining revenues. In large markets, most television broadcasters will remain profitable, though some may scale back local programming--mostly news and public affairs--and some marginal stations may go dark. In smaller markets the effects will be more severe with some stations going off the air, reducing viewer choice. Overall, by the end of the decade, fewer broadcast television stations will serve a shrunken, but nevertheless substantial, audience.

The three conventional television networks' audiences' will continue to decline, albeit more slowly than over the recent past. As cable advertising becomes a better substitute for network advertising, network revenues will fall along with audiences. The effect on network programming likely will be lower-cost and lower-quality programming, with the result that the networks will continue to lose their uniqueness to both audiences and advertisers. It is possible, however, that in the long run program quality will decline less than program costs because payments to the most popular talent will fall with the audiences they can command. Further, in the short run, despite declining profitability, the three major networks in most cases will attract larger audiences than the alternatives and overall outspend their competitors on programming. Broadcast networks and stations will likely attempt to expand the application of their programming, packaging, and scheduling skills by diversifying into nonbroadcast media.

Viewers who do not subscribe to cable or other multichannel media will be made worse off by a decline in the quantity and quality of broadcast service. Because of its mandate to provide a nationwide communications system, the Commission should be concerned, in particular, with viewers who value television, but, in effect, have no substitutes for broadcast service, either because they lack access to multichannel media or because they cannot afford to subscribe to multichannel services. But viewers who subscribe to multichannel video services almost certainly will benefit from access to a greater quantity and diversity of programming.

IMPLICATIONS FOR REGULATION

Existing broadcast regulations may prevent broadcasters from adopting more efficient forms of organization and offering services the public would value. Relaxing or eliminating such rules would allow broadcasters to compete more effectively, and would facilitate the continued provision of valued over-the-air services.

The regulatory challenges of the next decade are to develop an equitable and efficient regulatory framework for all video service providers and to give single-channel advertiser-supported television broadcasters flexibility to compete more effectively with multichannel rivals that benefit from a dual revenue stream. Broadcasters should not be hindered excessively from diversifying to make efficient use of their core skills--production, acquisition, and scheduling of programming, as well as selling advertising. The physical distribution of the broadcast signal is, in fact, a small part of the broadcasters' business.

Thus, the Commission should eliminate its broadcast multiple ownership and network-cable crossownership rules, relax its duopoly rules, and seek Congressional authority to relax its cable-broadcast crossownership prohibition. Moreover, many of the Commission's network-affiliate regulations are ripe for re-examination, as is the forced sale of broadcast programming to cable via the statutory compulsory license. Fewer broadcast stations also means that there will be fewer areas in which broadcast service provides a competitive check on cable rates.

I. INTRODUCTION

Over the past several years, new services and technologies have produced vast changes in the television marketplace. Cable television systems, videocassette recorders (VCRs), home satellite receivers, and additional over-the-air television stations have given television viewers far greater program choice and viewing convenience. Direct broadcast satellite (DBS) systems may shortly add a nationwide multichannel service. Viewers find the additional choice and convenience highly valuable, as expenditures of $24 billion a year for cable subscriptions and videocassette rentals and purchases attest. The expansion of video service in the past fifteen years has also dramatically changed the competitive environment for broadcasters, resulting in a substantial decline in the audience shares and advertising revenues of conventional over-the-air television stations.

The purpose of this study is to document these changes and to assist the Federal Communications Commission (FCC) in determining to what extent the economic and technological changes in the marketplace call for changes in its existing rules. A primary goal of the FCC's regulation of broadcasting is to create an environment in which the services that viewers want are delivered in the most efficient manner. In serving viewers' interests, the FCC historically has considered as important goals diversity of programming, service to local communities, and provision of public interest programming, such as news and public affairs. This study is based on the belief that, in pursuit of these goals, the Commission should foster development of a marketplace in which all firms can compete on an even basis, unhindered by artificial regulatory handicaps, and all have an opportunity to provide the most highly valued and most efficient service possible. The Commission should be concerned about the availability of service to viewers rather than the profitability, or even the continued existence, of particular firms or industries.

Many of the Commission's existing rules conflict with these goals, hindering broadcasters' efforts to provide service and preventing them from competing on an even footing in the new, more rigorous competitive environment. Many broadcast regulations, for instance, place restrictions on stations and networks that may make it difficult for them to show the programming that would be most valued by viewers or to make business arrangements that would increase their efficiency. Many rules place restrictions on broadcasters or broadcast networks that do not apply to their competitors.

While eliminating sources of inefficiency is always desirable, that objective takes on particular urgency at a time when broadcast stations and networks face intense competition and, in extreme cases, the prospect of insolvency. While broadcasters' programming for the most part is carried by cable systems, and could in principle be transmitted by other media, broadcasters furnish an important service to viewers not passed by cable or who cannot or are unwilling to pay for cable or other video media. They also provide the major source of competition to cable systems.

Many of the FCC's broadcasting rules were adopted when there were far fewer channels per market and the three networks dominated the supply of programming. Much of the FCC's broadcast regulation was motivated by a desire to limit economic market power and concentration of control over program content on the part of broadcast stations and networks. These concerns appear misplaced, or at best of greatly diminished importance, in a world where broadcast stations and networks face dozens of cable channels and program networks.

This study shows that a reduction in the quantity and quality of broadcast service is highly likely and provides a factual basis for reconsideration of a large body of mass media rules, Changes in Commission rules to allow more efficient provision of service may have an important effect in allowing broadcasters to continue to offer service the public values. The study documents the changes that have occurred in the video marketplace over the past fifteen years and the effects of those changes on over-the-air broadcasting. The study attempts to project trends in the marketplace over the next decade and discusses new technologies that may affect those trends. The study focuses in particular on two related issues: (1) the impact of multichannel video providers on the competitive position of television broadcasting; and (2) the implications of changes in viewing patterns, changes in the advertising market, and the use of direct payment for programming for the ability of broadcast television stations to pay for programming.

The next chapter discusses the economics of advertiser and viewer support of video programming. Chapter III gives an overview of the market for video services. Chapter IV examines the current state of broadcast television. Chapter V considers new technologies that may affect the video market. The following three chapters examine, in order, cable television, satellite television delivery, and other video media that may affect broadcasting. Chapters IX and X examine the operation of two markets that are central to the broadcasting business, the advertising market and the program acquisition market, to see how they are likely to be affected by changed competitive conditions. Finally, conclusions concerning the future of televison broadcasting are presented in Chapter XI.

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II. THE ECONOMICS OF TELEVISION FINANCING METHODS

Broadcast television in the United States has been financed, with few exceptions, by the sale of advertising time, in contrast with other video media where direct viewer payment is the norm. While broadcasters clearly produce programming that informs, educates, and entertains, their purpose in doing so is to attract audiences to sell to advertisers. Since the effects of the differing financing methods crucially affect both the financial viability of the media and their ability to meet consumers'

preferences, it is useful to begin by discussing these financing methods and their implications for the television marketplace.

Advertiser support historically has provided a means of paying for broadcast services in the absence of a conventional market for broadcast programming. A market in which viewers could buy the programs they want, as they do other commodities, did not develop in broadcasting in part because collecting payment from viewers historically has been prohibitively difficult or expensive.[1] Further, a broadcast system financed by direct viewer payment would entail economic inefficiences because, once a broadcast signal is transmitted, the cost of serving an additional viewer is zero.[2] Therefore, assuming transmission of the signal, consumer welfare is maximized when the price is zero.[3] A zero price is efficient because otherwise potential viewers for whom the value of the service is greater than or equal to the (zero) cost of providing it to them would be denied service. By allowing programs to be delivered to viewers free, advertiser support achieves economic efficiency in program distribution and provides benefits to viewers who otherwise would not receive television service.

At the same time, inefficiencies result from advertiser support because viewers cannot directly express their preferences for various kinds of programming. Advertisers pay for advertising time, roughly speaking, on the basis of the number of viewers attracted to adjacent programming, regardless of whether viewers like a program intensely or only slightly more than the alternatives. As a consequence, the number and type of

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1 Commission rules permit broadcast stations to transmit in the subscription television (STV) mode, but the Commission has classified those services as non-broadcast. Report and Order in General Docket No. 85-305, 2 FCC Rcd 1001 (1987) ("Subscription Video Report and Order"). At the moment, no full-power television broadcast stations operate in the STV mode, at least in part because of the expense of controlling access to the signal via encryption.

2 The marginal cost is zero only within a given service area. Expanding the geographic area of service may require additional expenditures for greater power, a higher antenna, or other technical improvements.

3 Economists call goods and services with this characteristic "public goods." Because the market will not supply them in optimal quantities, a theoretical case can be made for subsidy or public provision. Paul A. Samuelson, "Diagrammatic Exposition of a Theory of Public Expenditure," Review of Economic Statistics 37 (November 1955): 350-356. Of course, given the potential inefficiencies of providing goods through subsidy or direct government provision, these methods may be no more efficient than a pure market system.

programs that viewers would choose if they could pay for programming may not be produced.[4]

Viewer payment for programs, on the other hand, improves the incentives for program production but creates inefficiencies by causing programming to be denied to viewers who would value it more than the cost of delivering it. An inherent conflict thus exists between efficient production and efficient distribution of programming.[5]

Spence and Owen have examined the effects of television financing methods on program production incentives.[6] They show that both advertiser support and viewer fees undersupply programs that have high value to a small number of viewers and programs that are expensive to produce, relative to what would be supplied if viewers could be induced to pay what programs were worth to them. The biases are larger, however, with advertiser support than with viewer payment.

Spence and Owen show that advertiser support is closer to the optimum when viewers perceive programs as close substitutes than when viewers have strong preferences among programs. When viewers have only weak preferences among programs, the value of increased viewing due to the availability of free programming is high relative to the value of greater resources devoted to program production. On the other hand, if viewers have strong preferences, the gain from the availability of highly-valued programming to those willing to pay for it may outweigh the loss due to inefficient distribution, i.e., denying access to programming to those who are not willing to pay the market price but who place some value on the material.

Spence and Owen speculate that a mixed system with both advertising and viewer support may best serve consumers' needs, making available low-cost programming for those without strong program tastes and allowing those

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4 See Jora R. Minasian, "Television Pricing and the Theory of Public Goods," Journal of Law and Economics 71 (1964): 71-80; Paul A. Samuelson, "Public Goods and Subscription TV: A Correction of the Record," Journal of Law and Economics 71 (1964): 81-83.

5 Another source of inefficiency in broadcasting is nonmarket spectrum allocation techniques, which prevent the number of channels from adjusting in response to changes in demand. Spectrum-using services could be provided more efficiently, and licensees and users would be better off, if channels could be shifted from lower-valued to higher-valued uses, for instance between television and land mobile or cellular radio, without cumbersome administrative procedures.

6 Michael Spence and Bruce Owen, "Television Programming, Monopolistic Competition, and Welfare," Quarterly Journal of Economics 91 (February 1977): 103-126.

with strong tastes to purchase programming that would not otherwise be produced. Such a system would be particularly valuable where incomes and intensities of preference varied widely. Such a mixed system has indeed developed in the cable television industry.

Sale of advertising appears able to support less programming than viewers would like and would be willing to pay for.[7] Intuitively, it seems plausible that in most cases, advertisers value viewer exposure to commercials less than viewers value the associated programming. With large numbers of channels, however, the value to viewers of an additional channel probably falls rapidly.

Where both advertiser support and viewer payment exist, we expect that the role of advertiser-supported channels will be to provide mass-taste programming to a general audience. This audience will include both cable subscribers and those who, because of low income or lack of interest, are unwilling to pay for either higher-cost programming or programming for specialized tastes.[8] Existence of viewer-supported options, and of larger numbers of channels, will reduce the audiences and the advertising revenues of advertiser-supported channels, and may reduce the number of advertiser-supported channels than can be supported. The viability of advertiser-supported broadcast stations will depend on the size of the audience for mass-market programming relative to that for specialized programming, and on the demand for advertising to the remaining viewers of over-the-air channels. Most viewers probably have some demand for mass-market programming and some demand for specialized programming. Demand for broadcast television advertising, in turn, will depend in part on what advertising substitutes exist to reach the broadcast audience. If few good substitutes exist for television advertising, advertising revenues will not necessarily decline proportionately with the decline in audiences.

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7 The fact that consumers will pay for cable services in areas where unused over-the-air allotments exist suggests that advertiser support results in an undersupply of programming. In 42 of the top 100 television markets there is at least one commercial television channel within 55 miles for which no license application has been filed. Federal Communications Commission, "Television Channel Utilization," Public Notice, September 9, 1990.

8 Broadcast network programming is currently more expensive than cable programming in the aggregate, but not necesarily at the level of individual programs. There is some evidence of efforts by broadcast networks to move to less expensive types of programming. "NBC Outlines Disturbing Trends in Network Finances," Los Angeles Times, January 7, 1991, p. F-4; "Network News Divisions Are Developing Programs in Effort to Lure More Viewers," Wall Street Journal, September 24, 1990, p. B-11. For a discussion of cable and broadcast programming see chapter X below.

Cable and other new media offer additional choices to subscribers, and the fact that subscribers are willing to pay for those choices indicates that they place significant value on having those additional choices available. As long as the quality of broadcast service, in terms of meeting the preferences of those who view it, remains equally good, subscribers to other media are made better off and no one is made worse off. If the quality of broadcast service declines, however, viewers who do not subscribe to cable will be made worse off. The following chapters consider changes in the markets in which broadcasters operate, and likely consequences of those changes for viewers, as a result of new media and technologies.

III. THE MARKET FOR VIDEO MEDIA

In most of the United States in the mid-1970's the only sources of visual entertainment and information were movie theaters and broadcast television. Television service was almost universally available; as shown in table 1, 97.4 percent of households had television sets in 1976. The percentage has grown slightly in the period since. The percentage of television households during this period has been far higher than the percentage of households having telephones.[9] By 1990, almost two-thirds of households had more than one television receiver, and the average number of sets per household was two.

TABLE 1

HOUSEHOLDS WITH TELEVISION EQUIPMENT AND SERVICES, 1975-1990

	1976	1980	1985	1990
Television Sets (% of All Households)	97.4	97.9	98.1	98.2
Multiple Sets (% of TV Households)	43.1	50.1	56.8	65.3
Average Number of Sets	1.56	1.68	1.83	2.0
Homes Passed by Cable (% of TV Households)	33.2	45.7	76.2	91.2*
Cable Subscribers (% of TV Households)	17.0	25.2	43.2	56.0*
Videocassette Recorders (% of TV Households)	0.0	1.1	20.8	68.6
Home Satellite Dish Systems (% of TV Households)	0.0	0.1	1.6	2.9

SOURCES: Television sets and videocassette recorders, Television Bureau of Advertising, Inc., "Trends in Television," April 1990, pp. 3-6; homes passed by cable and cable subscribers, Paul Kagan Associates, Cable Television Investor, Nov. 21, 1990, p. 9; home satellite dish systems, 1980 and 1985, Report and Order in General Docket 86-336, 2 FCC Rcd 1669 (1987), paragraph 25 and table 2; 1990, Satellite Business News, Dec. 12, 1990.

*Estimated.

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9 U.S. Bureau of the Census, Statistical Abstract of the United States: 1989 (109th edition). Washington, D.C., 1989, p. 544.

The past fifteen years have seen the advent of alternative sources of video programming, primarily through the increasing penetration of cable television and the introduction and diffusion of the home videocassette recorder. As shown in table 1, cable subscribership has grown from 17 percent of households in 1976 to 56 percent in 1990. Home satellite dishes provide multichannel service in about 3 percent of households; roughly 20 percent of households not passed by cable have home satellite dishes.[10] Additional households receive video service from so-called wireless cable systems and from satellite master antenna television (SMATV) systems in large buildings.[11] Videocassette recorders, whose use was negligible in 1975, are now used by more than two-thirds of all households. Other innovations introduced during the period, video games and home computers, compete for viewers' time (and their television screens).

More channels of video service are available to viewers as well. The number of over-the-air television stations available to the median household increased from six in 1975 to ten in 1990. Including cable channels increases the median number of available channels to well over thirty.[12]

The relative size of the segments of the video industry, and their recent growth rates, reflect the revolution in the market in the last 15 years (table 2). Expenditures on cable television (by both subscribers and advertisers) are now more than half as large as those for broadcast television. Total expenditures on broadcast television grew more slowly than the Gross National Product (GNP) between 1984 and 1989; expenditures on network television grew slowly during this period. (Indeed, when adjusted for inflation, network television expenditures actually dropped from 1984 to 1989.) Cable advertising and subscriptions, by contrast, have grown much faster than the GNP. Consumer expenditures on home video in 1989 were larger than advertiser expenditures on network television and almost twice as large as theater box office revenues. Consumer expenditures on home video grew at 47.5 percent per year between 1984 and 1989.

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10 Home satellite dishes make available much of the same programming that is typically available on cable systems.

11 Satellite program delivery has been essential to expanding the alternatives in the market, providing inexpensive program delivery to cable systems, home receiving dishes, wireless cable systems, SMATV systems, and independent stations, as well as to network affiliates.

12 Television stations calculated from Arbitron Ratings Company, Television Markets and Rankings Guide, 1975, 1980-81, 1984-1985 ADI Market Guide, Television ADI Market Guide, 1989-1990; cable channels from NBC, citing Nielsen Television Index, Television Audience 1990 (1991).

TABLE 2
EXPENDITURES ON VIDEO MEDIA, 1984 AND 1989

	1984 Gross Expenditures ($ Billion)	1989 Gross Expenditures ($ Billion)	% Change 1984-1989
Broadcast Television	19.8	24.1	21
Networks	8.3	9.1	10
Stations	10.5	15.0	42
Cable Television	8.3	17.3	109
Advertising*	0.6	2.0	241
Subscriptions	7.2	14.1	97
Other	0.5	1.1	127
Filmed Entertainment	10.8	23.8	120
Box Office	4.0	5.0	25
Home Video	1.4	9.6	586
Television Programs	5.0	7.9	58
Barter Syndication**	0.4	1.2	200
GNP			39

SOURCES: Broadcast Television, McCann-Erickson, Inc., "Estimated Annual U.S. Advertising Expenditures," prepared for Advertising Age, April 1991; cable television, Paul Kagan Associates, Inc., The Kagan Cable TV Financial Databook (June 1990), p. 70; and Paul Kagan Associates, Inc., Cable TV Investor, Nov. 21, 1990, p. 9; filmed entertainment, and GNP, The Veronis, Suhler & Associates Communications Industry Forecast ("Communications Industry Forecast") (New York: Veronis, Suhler & Associates, Inc., 1990), pp. 13, 22.

NOTE: Expenditures on filmed entertainment cannot be added to those for TV and cable because television program and barter syndication expenditures are inputs into those services. Also, totals reflected rounding error.

*Includes local and network cable advertising.

**Programming traded for television advertising time.

IV. BROADCAST TELEVISION

The advent of alternative video media has radically altered the market in which television stations and networks operate. This chapter reviews the effects on the availability and viewing of broadcast stations and on their financial health.

AVAILABILITY OF OVER-THE-AIR TELEVISION SIGNALS

Despite apparent competition from new cable systems, the total number of television stations, particularly UHF stations, has increased over the past decade (table 3). After a period of slow growth in the 1970's, the

TABLE 3
COMMERCIAL TELEVISION STATIONS, 1975-1990

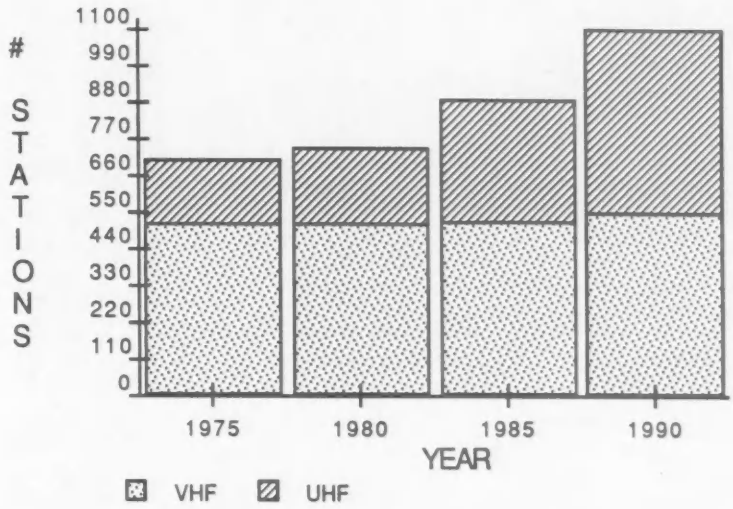
	1975	1980	1985	1990
Number of Stations				
Total*	706	734	883	1,093
VHF*	514	516	520	547
UHF*	192	218	363	546
Independent**	86	129	262	380
% Change Over 5 Years				
Total*		4.0	20.3	23.8
VHF*		0.4	1.0	5.2
UHF*		13.5	66.5	50.4
Independent**			103.1	45.0

SOURCES: Total, VHF, and UHF, Television Bureau of Advertising, Inc., "Trends in Television," April 1990, p. 9; independents, 1975, Tentative Decision and Request for Further Comments, BC Docket No. 82-345, 94 F.C.C.2d 1019 (1983), paragraph 111 and table 3; 1980-1990, Arbitron, cited by CBS.

*January 1st each year. **November each year except 1990, which is based on May.

number of commercial UHF stations grew by 150 percent between 1980 and 1990. About 70 percent of the new stations since 1980 have been independents, that is, stations unaffiliated with the three major broadcast television networks, ABC, CBS, and NBC; the number of independents nearly tripled between 1980 and 1990. The number of independents grew from about 18 percent to about 35 percent of the total.

FIGURE 1
COMMERCIAL TELEVISION STATIONS



Industry observers believe that the growth of cable made possible the expansion in the number of broadcast television stations by increasing the potential audiences of UHF stations.[13] Cable carriage of over-the-air signals reduces the disadvantage of UHF relative to VHF stations by increasing UHF stations' geographic reach and improving their reception quality. Channel positioning also appears important to the success of broadcast stations, and cable systems can give UHF stations desirable low channel positions. Satellite delivery of syndicated programming may also have encouraged the growth in numbers of television stations by making program distribution more flexible and efficient and less expensive.

The increase in the number of over-the-air stations is reflected in an increase in the number of stations available to viewers (table 4).[14] In

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13 For a discussion of the disadvantages under which UHF television stations operate, see UHF Comparability Task Force, Comparability for UHF Television: Final Report, FCC, Office of Plans and Policy, September 1980, pp. IV-XXVIII.

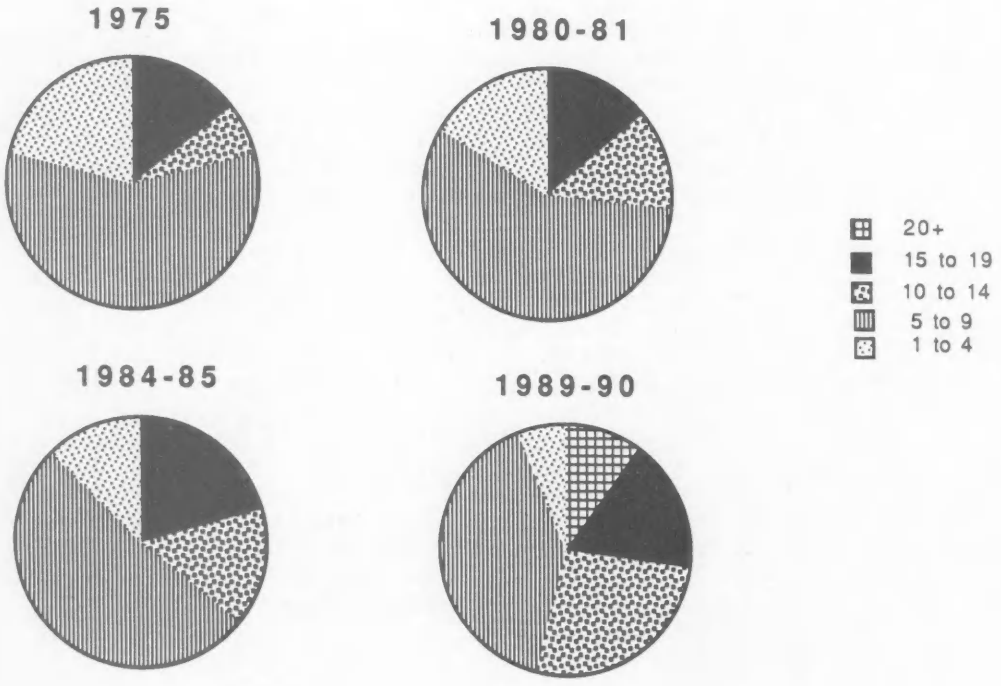
14 The data in table 4 are percentages of households in Arbitron Areas of Dominant Influence (ADIs), not percentages of total U.S. households. Each county in the United States, except in Alaska and Hawaii, is assigned to one ADI. In 1990 ADI households comprised 99.1 percent of all U.S. households. The data on numbers of stations represent all stations in the ADI; not all of them are receivable by every household.

TABLE 4
HOUSEHOLDS IN ADI'S WITH VARIOUS NUMBERS OF OVER-THE-AIR SIGNALS

	1975		1980-81		1984-85		1989-90	
	%	Cum. %	%	Cum. %	%	Cum. %	%	Cum. %
20+	0.0	0.0	0.0	0.0	0.0	0.0	10.1	10.1
15-19	14.3	14.3	13.8	13.8	20.5	20.5	17.2	27.3
10-14	6.8	21.1	12.8	26.6	15.2	35.7	26.5	53.8
5-9	57.7	78.8	56.8	83.4	51.9	87.6	40.1	93.9
1-4	21.1	99.9	16.5	99.9	12.4	100.0	6.1	100.0

SOURCE: Arbitron Ratings Company, Television Market and Rankings Guide, 1975, 1980-81; 1984-1985 ADI Market Guide; Television ADI Market Guide 1989-1990.
NOTE: Percentages do not add to 100 due to rounding.

FIGURE 2
NUMBER OF BROADCAST TV SIGNALS AVAILABLE TO SHARE OF HOUSEHOLDS



1975, 79 percent of television households were located in markets with 5 or more stations, not counting cable channels; by 1990 94 percent of television households were in markets with 5 or more stations (typically the three major networks, a PBS station, and an independent). In 1975 14 percent of television households had available 15 or more over-the-air stations; in 1990 27 percent had 15 or more stations and 10 percent had 20 stations. Not only has the number of television signals available increased dramatically over the past 15 years, but over-the-air service is such that most households have considerable choice in programming even without cable. Ironically, however, this expansion of over-the-air signals was made possible by cable.

TELEVISION VIEWING

Time spent watching television has increased by almost an hour per day per household since 1975. Total household viewing reached a peak in 1985, however, and has declined slightly since:[15]

Year	Hours
1975	6.1
1980	6.6
1985	7.2
1989	7.0

The causes of the decline in measured viewing are not entirely clear. The change may have been caused by a change in audience measurement techniques by A.C. Nielsen in 1987.[16] On the other hand, as detailed in the appendix, changes in the demographic characteristics and behavior of the population make it likely that a real decline in viewing time per household has occurred. Most importantly, labor force participation of women has increased steadily and is predicted to continue to increase, meaning less daytime viewing by women and less leisure for viewing in other time periods by all family members. The growth of single-parent families has reinforced the trend. In addition, the population is aging, producing a larger proportion of working-age persons. Slower population growth will also mean slower growth in the number of television households.

Cable viewing appears to have displaced viewing of over-the-air signals to a considerable extent in recent years. In 1990, cable households viewed 18.8 percent less broadcast television than non-cable households, on average, even though they viewed 32.5 percent more hours of television

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15 "Trends in Television," Television Bureau of Advertising, Inc., April 1990, p. 7. Data for 1975 through 1985 are based on NTI Audimeter sample; data for 1989 are based on NTI People Meter sample.

16 But measured viewing was slightly lower in 1986 than in 1985, using the old measurement technique.

altogether (table 5).[17] The greater total viewing of cable households almost certainly results in part from differences in tastes, since those households that use television most are most likely to subscribe to cable and to pay-cable channels.[18] The differences are likely to result also from availability of a larger quantity of attractive programming in cable households.

TABLE 5
TELEVISION VIEWING BY CABLE AND NON-CABLE HOUSEHOLDS
(Average Weekly Hours, Oct. 1989 - Sept. 1990)

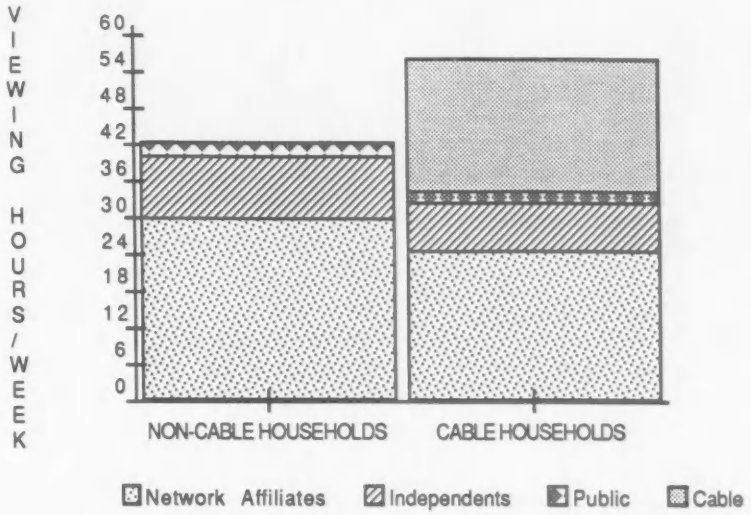
	Non-cable Households	Cable Households	Difference	% Difference
Total TV Viewing	42.1	55.8	+13.7	+32.5
Broadcast	42.1	34.2	-7.9	-18.8
Network Affiliates	30.1	24.6	-5.5	-18.3
Independents	10.0	8.2	-1.8	-18.0
Public	2.0	1.4	-0.6	-30.0
Cable	--	21.6		
Basic	--	16.5		
Pay	--	5.1		

SOURCE: Cable Televison Advertising Bureau, Inc., Cable TV Facts, 1991 ed., p. 11, citing Nielsen Monthly Cable Status Report.

17 Video games and the use of videocassette recorders to view prerecorded tapes also compete for viewers' time and hence probably have cut into broadcast televison viewing.

18 For definitions of basic and pay cable, see chapter VI.

FIGURE 3
WEEKLY TELEVISION VIEWING



Trends in cable and non-cable household viewing are shown in table 6, which provides data on all-day viewing shares for the ratings years of 1984/85 and 1989/90.[19] The share of viewing accounted for by cable services increased steadily during this period. For all households, the share of cable-originated services (i.e., basic plus pay) rose from 14 to 26 percent during the period. If distant independent stations and superstations, which in general are available only via cable, are included, in 1989/90 32 percent of viewing in all television households was accounted for by services available only via cable. In cable households, the viewing share of cable-originated services rose from 24 percent in 1984/85 to 39 percent in 1989/90. So the declining share of broadcast viewing results both from increased cable penetration and from an increased share of cable programming in the viewing of cable households. In 1989/90, services available only via cable accounted for a substantial 45 percent of viewing in cable households and 51 percent--over half--in pay cable households. The increase in cable viewing occurs entirely in basic service; pay viewing shares have remained flat, while the combined share of superstations and distant independents has fallen.

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19 Except as noted, the data presented here are percentages of total viewing, not the commonly-reported shares of households, which do not account for viewing of more than one channel at a time by a household.

TABLE 6
ALL-DAY VIEWING SHARES, CABLE AND NON-CABLE HOUSEHOLDS

	ALL HOUSEHOLDS		CABLE HOUSEHOLDS		PAY CABLE HOUSEHOLDS		NON-CABLE HOUSEHOLDS	
	1984/85	1989/90	1984/85	1989/90	1984/85	1989/90	1984/85	1989/90
Network Affiliates	63	52	53	43	47	39	74	70
Independents	21	19	20	15	19	15	22	24
Local	12	13	8	9	8	9	18***	22
Distant	3	2	4	2	3	2		1***
Superstations**	6	4	8	4	8	4	4***	1***
Public	3	3	3	3	3	2	4	5
Cable	14	26	24	39	31	44	--	--
Basic**	8	20	14	30	14	28	--	--
Pay	6	6	10	9	17	17	--	--
Total*	101	100	100	100	100	100	100	99
Basic+Dist.+Super.	17	26	26	36	25	34	--	--
Basic+Dist.+Super.+Pay	23	32	36	45	42	51	--	--

SOURCE: Cabletelevision Advertising Bureau, Cable TV Facts, 1991 ed., p. 6; 1986 ed., p. 6; both cite the Nielsen Monthly Cable Status Report.

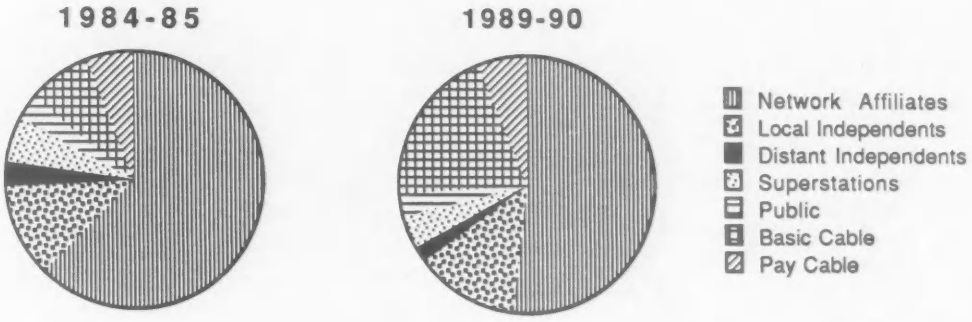
NOTE: Figures are pencentages, not commonly-reported household shares.

*Differs from 100 percent due to rounding.

**In 88/90, WTBS is included in basic cable, not superstations.

***Distant signals and superstations are received by satellite in some non-cable households.

FIGURE 4
ALL-DAY VIEWING SHARE



Cable subscribership will almost certainly continue to grow, though the rate of growth may have peaked. Over 90 percent of television households are now passed by cable, and over 60 percent of those passed subscribe. Many of the households not passed by cable are located in areas where cable service would be prohibitively costly, and many nonsubscribers probably place a low value on cable service. By one estimate, basic cable subscribership, which grew 41 percent between 1985 and 1990, will grow 18 percent between 1990 and 1995 and 30 percent between 1990 and 1999. By this estimate, in 1999 about two-thirds of all households will receive cable.[20] But changes in the relative attractiveness of the media could drastically change this proportion.

Viewing of broadcast network programming has declined more sharply than viewing of other over-the-air programming. Over the whole period from 1975 to 1990 the three-network share of households (not percentage of viewing) in prime time fell from 93 to 64; the absolute number of households reached fell by 11.4 percent (table 7).[21] The largest decline in the network share occurred between 1980 and 1985, while the largest decline in households reached occurred after 1985. This result is consistent with a pattern in which viewers, particularly new cable subscribers, first increase

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20 Paul Kagan Associates, Inc., Cable TV Programming, August 31, 1990, p. 2.

21 In the earlier years there was very little difference between percentages of households and percentages of total viewing. In recent years multiple set viewing has increased; total share points for all households were 105 in 1989/90. As a result, shares of viewing are slightly higher than percentages in recent years, so that the decline in viewing is slightly understated in table 7.

TABLE 7
PRIME-TIME VIEWING OF THE THREE MAJOR COMMERCIAL NETWORKS

	1975	1980	1985	1990*	1994*
Share	93	89	74	64	61
Households Reached (Millions)	36.9	40.0	38.0	32.7	33.5

SOURCE: Communications Industry Forecast, 1990, pp. 45-46.
NOTE: Share of households, not percentage of total viewing.
*Projected.

their total viewing by adding cable and new independents to their existing viewing, then reduce viewing to a level closer to the original level but maintain the new network-independent-cable proportions.

In the top ten markets the three networks began with a smaller share, and the decline has been less steep, than in other markets. The three-network share of total viewing in these markets fell from 75 in 1980 to 63 in 1989.[22] As a result, the three-network share now appears to be about the same in all markets as it is in the top markets. A possible explanation is that network viewing has historically been lower in markets with more over-the-air alternatives. With the growth in the numbers of independents and cable systems, the number of alternatives available in smaller markets has risen, making viewing in those markets more comparable to that in the largest markets. This is in accord with the projections in table 7 of a slower decline in the viewing share of the networks through 1994. Veronis, Suhler, and Associates attribute this pattern to slower growth of competitors, and also project a modest increase in the number of households reached caused by an increase in the number of television households. As we discuss below, this prediction probably understates the decline in network audiences.[23]

The networks' share of prime-time viewing remains larger than their share of daytime viewing, but the decline in prime-time network viewing has been more rapid than the decline in daytime viewing.[24] The decline in

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22 Nielsen Station Index, Nov. 1980 and Nov. 1989.

23 For elaboration of the Veronis, Suhler view, see The Veronis, Suhler & Associates Communications Industry Forecast (New York: Veronis, Suhler & Associates, Inc., 1990) ("Communications Industry Forecast") pp. 46-47. In fact, the networks' prime-time share dropped to 61 in 1991. Broadcasting, June 17, 1991, p. 33. Hence, the Veronis, Suhler network share projection is too high.

24 1991 Cable TV Facts (New York: Cabletelevision Advertising Bureau, Inc., 1991), p. 14.

prime-time viewing has a particularly large impact on networks because their advantage to advertisers historically resided in their ability to deliver the mass audiences that watch television during prime time.

At the same time, the prime-time viewing shares of independents and affiliates of the Fox network have increased (table 8).[25] In fact, increased viewing of independents and Fox stations accounts for almost as much of the decline in the prime-time network share as does increased viewing of cable-only programming.

TABLE 8
COMMERCIAL TELEVISON PRIME-TIME VIEWING SHARES BY CHANNEL TYPE
1982/83-1989/90

Years	3 Networks	Independents	Fox	Basic Cable	Pay Cable
1982/83	73	14		4*	6*
1983/84	71	15		5*	6*
1984/85	69	15		6*	6*
1985/86	68	16		7*	6*
1986/87	66	17		7*	6*
1987/88	62	19	2	9*	6*
1988/89	59	19	3	12	6
1989/90	58	19	4	14	6

SOURCE: 1982/83-1987/88, Nielsen Television Index and Nielsen Monthly Cable Status Reports (Oct. - Nov.); 1988/89-1989/90, Nielsen Television Index.

NOTE: Figures are percentages of viewing, not commonly reported household shares. Totals do not sum to 100 because viewing of PBS stations is not included. Moreover, Fox shares are also included in the independents column, e.g., the 1989/90 share for non-Fox independents was 15.

*Monday - Sunday 8:00 - 11:00 PM.

25 The Fox network began service in the 1987/88 season and distributes programming five evenings a week to formerly independent stations. For most purposes Fox stations are grouped with independents in this paper.

FIGURE 5
PRIME-TIME VIEWING SHARES

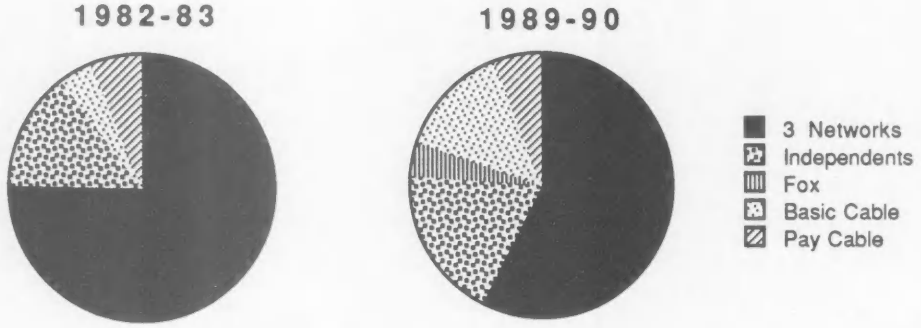

Table 9 shows the shares of viewing accounted for by network affiliates during "network dayparts" and "non-network dayparts." Overall, viewing shares of affiliates have declined from 63 percent to 52 percent in all households and from 53 to 43 percent in cable households during the period from 1984/85 to 1989/90. However, the decline has apparently been more precipitous in the non-network dayparts, i.e., those that are programmed locally by the affiliated stations, either with locally produced

TABLE 9
VIEWING OF NETWORK AFFILIATES IN NETWORK AND NON-NETWORK DAYPARTS
(All Day Viewing Shares)

	1984/85	1989/90
All TV Households		
Affiliate Share	63	52
Network Dayparts	41	35
Non-Network Dayparts	22	17
Cable Households		
Affiliate Share	53	43
Network Dayparts	34	31
Non-Network Dayparts	19	12
Pay Cable Households		
Affiliate Share	47	39
Network Dayparts	31	28
Non-Network Dayparts	17	12

SOURCE: Cable Television Advertising Bureau, Cable TV Facts, 1991 ed., pp. 12-13; 1986 ed., p. 14; both cite the Nielsen Monthly Cable Status Report.

NOTE: Figures are percentages, not commonly-reported household shares.

syndicated programming.[26] For all households, the decline was five percentage points in non-network dayparts and six percentage points in network dayparts, though the base for network dayparts was almost twice as big. For cable and pay cable households the difference was even more pronounced. On an absolute level, viewing of non-network dayparts is relatively small, 17 percent of all-day viewing in all households in 1989/90 and 12 percent of the comparable total for cable households.

The data do not permit identification of viewing shares for locally-produced programming such as news and public affairs, or for syndicated programming that could be interpreted as contributing to the affiliated stations' fulfillment of their mandate to program in the public interest. Nevertheless, the figures in table 9 raise the question of how much value consumers place on the local component of a network affiliate's service.[27]

The relative value of network and local programming to viewers is important because the projections of cable subscribership given below implicitly assume that the broadcast system will remain stable in its current form. If the networks ever chose to deliver programming directly to the home viewer by cable, satellite, or other non-broadcast means, the future of local television broadcasting would look much bleaker, particularly if viewers place a low value on affiliates' local programming. Viewers' valuation of local programming will also affect the competitive balance between cable and satellite service, since satellite systems probably will be unable for technical reasons to deliver local signals.

COSTS, REVENUES, AND PROFITS OF BROADCAST TELEVISION STATIONS

Broadcast station profitability provides an indicator of the health of the broadcast televison industry and the sustainability of its current configuration. Additional competitors can be expected to affect stations' profits in at least two ways. First, the observed decline in broadcast viewing has reduced audiences for advertising and may have contributed to reduced advertising revenues for networks and stations. Second, increased numbers of video channels may have increased the demand for and bid up the

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26 On the other hand, the network comments in the Financial Interest and Syndication proceeding show the network share of total day viewing declining faster than the affiliate local share between 1980 and 1989. Joint Comments of Capital Cities/ABC, Inc., CBS Inc. and National Broadcasting Company, Inc. in MM Docket No. 90-162 ("Network Fin/Syn Comments"), filed June 14, 1990, Vol. I, p. 114.

27 Independent stations also provide some local programming, including news, but viewing shares of this programming cannot be disaggregated. However, as we shall see below, independents as a groups provide much less of such programming than do affiliates.

prices of inputs into broadcast service, especially programming and the talent that produces it, and thus increased costs.

To see how changes in the video marketplace have affected the financial position of broadcast stations, we look first at a snapshot of the revenues, expenses, and profits of commercial television stations. Then we examine trends over time in the components of these measures.[28] The data are drawn from FCC Television Broadcast Financial Data for 1975 and 1980 and from the National Association of Broadcasters (NAB) Television Financial Report for more recent years.[29] The data are averages over all reporting stations in each category.

Table 10 shows averages of net revenues, expenses, and profits in 1989 for commercial stations grouped by ADI market rank.[30] In general, stations in large markets have many times the revenues and expenses, and much larger percentage profits, than stations in small markets. Average 1989 revenues range from $56.4 million[31] in the top ten markets to $2.5 million in markets ranking below 175. The high revenues of stations in large markets are usually explained by the high rates advertisers are willing to pay to advertise to large audiences, coupled with a limited number of frequency allotments that prevents expansion of the number of broadcast stations.

Average annual expenses were $40.7 million for stations in the top ten markets but only $2.8 million for markets below 175. Assuming similar service areas across markets, the technical cost of delivering signals is invariant with the number of viewers. While cost differences exist between UHF and VHF stations, and rent and other input costs are likely to be higher in large markets, such cost differences are highly unlikely to explain the pattern of expenses seen here.

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28 The statistics shown here are at best suggestive of the relationship between characteristics of the market and broadcasters' financial condition. More rigorous statistical techniques, such as multiple regression analysis, would be required to provide a definitive explanation of the mechanisms at work.

29 FCC, Public Notice, "TV Broadcast Financial Data," August 2, 1976; FCC, Public Notice, "TV Broadcast Financial Data," August 10, 1981; National Association of Broadcasters, Television Financial Report, (Washington, D.C.: National Association of Broadcasters, 1986, 1987, 1988, 1989, 1990).

30 Net revenue is gross revenue minus agency and rep commissions, not gross revenues minus costs. NAB, Television Financial Report, 1990, p. 118.

31 In the largest markets, some stations have substantially higher revenues.

TABLE 10
AVERAGE REVENUES, EXPENSES, AND PROFIT OF COMMERCIAL TELEVISION STATIONS, 1989

ADI Market Rank	Average Net Revenue ($ Million)	Average Expenses ($ Million)	Average Pre-Tax Profit ($ Million)	Profit as % of Net Revenue
1-10	56.4	40.7	15.7	27.8
11-20	26.8	23.1	3.7	13.7
21-30	20.1	17.3	2.8	14.0
31-40	13.8	13.7	0.2	1.3
41-50	11.4	10.4	1.0	8.7
51-60	8.9	9.0	(0.1)	(1.4)
61-70	8.5	7.7	0.9	10.1
71-80	7.1	6.8	0.2	3.5
81-90	6.1	5.8	0.3	5.6
91-100	6.5	5.7	0.7	11.3
101-110	5.3	6.1	(0.8)	(15.3)
111-120	5.0	5.4	(0.4)	(8.2)
121-130	4.2	4.7	(0.5)	(10.8)
131-150	3.8	4.2	(0.4)	(11.3)
151-175	3.6	3.6	0.1	1.6
176+	2.5	2.8	(0.2)	(8.1)

SOURCE: NAB, Television Financial Report, 1990, pp. 1-16.
NOTE: Parentheses denote loss.

Despite the high average expenses in large markets, average profits were also very high in the top 30 markets. In the top ten markets they amounted to 27.8 percent of net revenue for all stations.[32] This pattern of costs and profits is consistent with artificial supply limitations in large markets, and with stations in those markets driving costs above the competitive minimum in an attempt to increase their audiences through expenditures on improved service, principally more expensive programming, when they cannot increase the quantity of programming and advertising time or compete for viewers by price. Noll, Peck, and McGowan saw a similar pattern of profits in 1973, and noted that the high profits of television broadcasting are an indicator that too few resources are being devoted to the industry.[33]

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32 For network affiliates average profits were 38.0 percent of net revenues in the top ten markets. Ibid., p. 34.

33 Roger G. Noll, Merton J. Peck, and John J. McGowan, Economic Aspects of Television Regulation (Washington, D.C.: Brookings, 1973), pp. 17-18.

Not all stations in large markets shared the high profits, however. At least 25 percent of stations in the top ten markets experienced losses.[34] In the current market, many stations experiencing losses may be new entrants or UHF independents that may have been profitable when there were fewer competing channels.[35] In any case, great differences clearly exist in the competitive success of large market stations.

In smaller markets profits were lower than in large markets. Aggregate losses occurred in most size classes of markets below the top 100.[36] At least 50 percent of independents in all market classes below the top ten experienced losses.[37]

Trends in Profits

Average profits of network affiliates have been extremely high, over 20 percent of net revenues, throughout the period studied (table 11). Affiliates' profits peaked at 29.9 percent in 1985. By comparison, average profits as a percentage of total receipts for the 500 largest industrial corporations averaged 3.9 percent in that year.

For both affiliates and independents, average profits show a pronounced downward trend over the last half of the 1980's. For network affiliates, however, average profits remain high at the end of the period, 21.8 percent of net revenues. While independents as a group were marginally profitable in 1989, they experienced increasing losses from 1986 through 1988.[38] The performance of independents improved in 1989 over 1988,

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34 NAB, Television Financial Report, 1990, p. 1.

35 In the past, differences in profits among stations within a market have been explained by higher costs and smaller coverage areas of UHF relative to VHF stations, lack of attractive non-network programming due to the higher costs of syndication relative to networking, and smaller audiences and revenues of non-network stations. See Noll, Peck, and McGowan, Economic Aspects of Television Regulation, pp. 58-96. Satellite delivery has since largely eliminated cost differences between networking and syndication, and cable has removed some, but not all, of the UHF handicap.

36 This is not to say, however, that many stations, especially network affiliates, were not profitable in small markets.

37 NAB, Television Financial Report, 1990, pp. 1-16.

38 Average net losses bottomed out at 3.2 percent of net revenue in 1988. See table 11.

TABLE 11
PROFITS OF COMMERCIAL TELEVISION STATIONS AS A PERCENTAGE OF NET REVENUES, 1975-1989

Year	Affiliates*	Independents*	500 Largest Industrial Corporations**
1975	26.2	8.1	
1980	29.1	17.1	4.5
1985	29.9	13.3	3.9
1986	27.9	(0.6)	4.1
1987	26.4	(1.8)	5.1
1988	25.0	(3.2)	5.5
1989	21.8	1.5	4.7

SOURCES: 1975 and 1980, FCC, Public Notice, "TV Broadcast Financial Data," August 2, 1976 and August 10,1981; other years, NAB, Television Financial Report, 1986 through 1990; for 500 largest corporations, 1980-88, U.S. Bureau of the Census, Statistical Abstract of the United States: 1990 (110th ed.) Washington, D.C. 1990, p. 542; 1989, Fortune, April 23, 1990, p. 339.

NOTE: Parentheses denote loss.

*Average for all reporting stations in class. **Median return on sales.

possibly as a result of the success of the Fox stations and falling prices of syndicated programming.[39]

The decline in profits of commercial television stations over the late 1980s is consistent with increased competition from increasing numbers of independent stations and cable systems. As noted above, network affiliates' audience shares, and total audiences, have declined. Viewing of independents, on the other hand, appears to have increased in the aggregate. Yet profits of independents have fallen far more than those of affiliates. An explanation may be found in the increasing number of independent stations, which kept viewership per independent station low. Between 1982 and 1989, while independents' prime-time share of all viewing increased from 14 to 19, the number of independent stations more than doubled. Looking at all-day viewing rather than prime-time viewing, the share of local independents only increased from 12 to 13 percent between 1984/85 and

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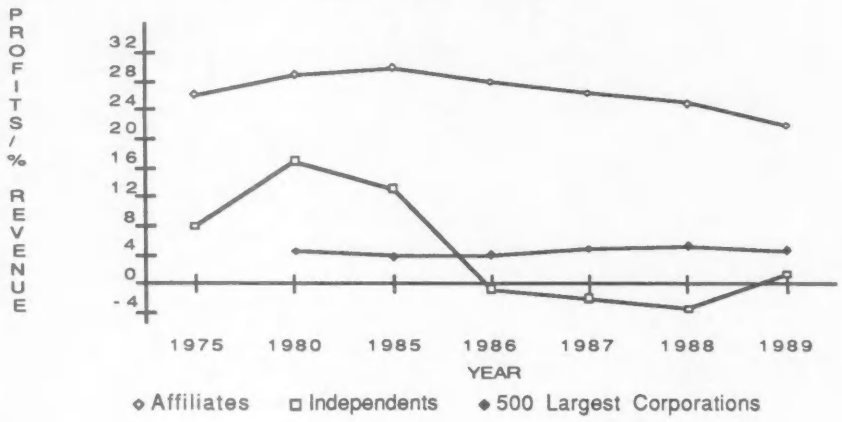
39 Disaggregating further shows the same downward trend, in general, for all groups of stations, but VHF independents had high average profits (17.2 percent of net revenue in 1989), while UHF independents had large average losses from 1986 on. Losses of UHF independents averaged over 20 percent of net revenues from 1986 to 1988, falling to 13.7 percent in 1989. NAB, Television Financial Report, appropriate years. The high profits of VHF independents may have occurred because they are primarily located in the largest markets and benefit from technical and coverage advantages over UHF stations.

FIGURE 6
PROFITS AS A PERCENTAGE OF REVENUE



1989/90.[40] Thus it is not surprising that independents' average profits plummeted during this period.

The difference in profits between large and small markets appears to have persisted over time. Profits were lower in markets below the top 100 than in all markets in 1975 and 1980 as well, but in those years profits occurred, in the aggregate, even in markets below the top 100. In 1980 profits were 26.9 percent of net revenue in all markets and 14.1 percent in markets below the top 100.[41]

The large losses reported here must be interpreted with caution. Accounting losses may not reflect economic losses. For instance, broadcast station selling prices, which reflect the value of the license in addition to the value of plant and equipment, have varied greatly over time. Interest on debt incurred to purchase stations enters into costs and may affect the pattern of profits in ways that are not obvious.

The losses reported in the NAB data may overstate the stations' difficulties, as the pattern of losses over time suggests. The FCC data show, for instance, that the percentage of independent stations reporting losses was 40.2 in 1975 and 45.5 in 1980. The NAB data show that in 1989 between 50 and 75 percent of independents reported losses. For the category with the worst financial performance, UHF independents, the percentage reporting losses was 75.0 in 1975, 88.9 in 1980, and something greater than

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40 See tables 6 and 8.

41 FCC, Public Notice, "TV Broadcast Financial Data," August 2, 1976; FCC, Public Notice, "TV Broadcast Financial Data," August 10, 1981.

75 percent in 1989. With long-term losses of this magnitude, one would expect to see wholesale exit from the market. Yet the number of independents, in particular UHF independents, has grown rapidly over the period. In the early years, growth in numbers of stations was relatively slow, so the losses during that period cannot be attributed, for the most part, to new stations with large startup costs. One can conclude that, while the trend of declining profits or increasing losses is clear, the absolute level of profits or losses, and the implications for the ability of markets to support the existing number of stations, are not.

The industry's expectations concerning future profits are reflected in television station trading prices. The price for which a station sells represents what buyers and sellers believe to be the present discounted value of the station's future profit stream. Television stations typically sold at prices between 10 and 12 times cash flow during the 1980's, but now are reported to be selling at seven to eight times cash flow.[42] Clearly beliefs concerning future profits of television stations have adjusted downward in the recent past.

Trends in Revenues and Costs

Affiliates and independents both enjoyed large increases in real (inflation-adjusted) average revenues between 1975 and 1985, followed by slow growth for affiliates and a slight decline for independents (table 12). Affiliates' revenues peaked in 1986. Independents recovered to some extent in 1989 from earlier declining revenues.

TABLE 12
AVERAGE INFLATION-ADJUSTED NET REVENUES
OF COMMERCIAL TELEVISION STATIONS, 1975-1989
(1982-84 Dollars)

	1975	1980	1985	1986	1987	1988	1989	85-89
Revenues ($ Million)								
Affiliates	6.3	8.0	12.1	13.3	12.6	12.7	12.7	
Independents	7.5	9.4	12.2	10.9	11.3	11.1	12.0	
% Change in Revenues								
Affiliates		26.8*	49.8*	10.6	-6.0	0.7	0.6	5.7
Independents		25.2*	29.8*	-10.7	3.3	-1.6	8.5	-1.6

SOURCES: 1975 and 1980, FCC, Public Notice, "TV Broadcast Financial Data," August 2, 1976 and August 10, 1981; other years, NAB, Television Financial Report, 1986 through 1990.
NOTE: Missing data imputed beginning in 1987.
*Over five-year period.

42 Kevin Goldman, "Sellers Are Finding the Price Isn't Right For Their Television Stations These Days," Wall Street Journal, May 7, 1981, p. B-1.

Breaking down costs into their constituent categories can provide an insight into observed cost changes and differences in costs across groups of stations. This section looks first at the composition of costs of commercial broadcast stations in markets of various sizes in 1989, then examines changes over time in the composition of costs.[43] The most striking difference across markets is the higher percentage of total expenses devoted to news and to programming and production in large markets (e.g., a total of 59.3 percent in the top ten markets) than in small markets (e.g., 23.8 percent in markets below 175) (table 13). This finding is consistent with stations in large markets competing through increased program expenditures

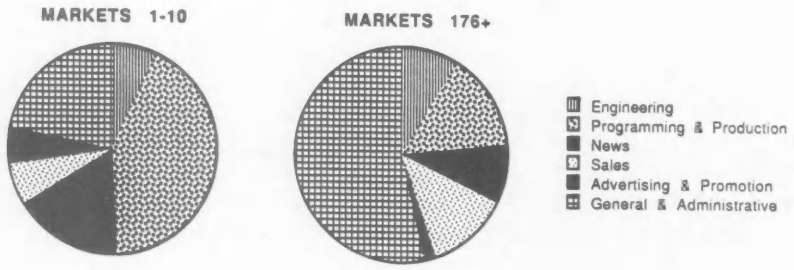
TABLE 13
EXPENSE ITEMS OF COMMERCIAL BROADCAST STATIONS BY MARKET SIZE, 1989
(Percent of Total Expenses)

ADI Market Rank	Engineering	Programming & Production	News	Sales	Advertising & Promotion	General & Administrative
1-10	6.7	42.7	16.6	6.4	5.9	21.6
41-50	6.4	29.1	12.4	9.2	4.2	38.6
91-100	7.9	26.5	11.5	11.6	3.7	38.9
131-150	7.7	17.5	10.8	10.6	2.1	51.4
176+	8.5	14.8	9.0	12.5	2.0	53.2

SOURCE: NAB, Television Financial Report, 1990.
NOTE: Percentages do not add to 100 due to rounding.

where the price and quantity of output are fixed. Also, prices of syndicated programs are to a large extent based on audience size, resulting

FIGURE 7
COMMERCIAL TV STATION EXPENSES (%)



43 Cost categories are taken from the NAB Television Financial Report.

in higher prices in larger markets for comparable programming.[44] At the same time, engineering, sales, and general and administrative expenses make up a decreasing share of expenses as market size increases.

Industry observers have reported that the increasing number of over-the-air and cable channels has bid up the price of programming, increasing station costs at the same time that their audiences are falling. To explore this assertion, we examine trends over time in the composition of broadcast station costs.

Table 14 shows programming expenses of commercial broadcast stations as a percentage of total costs. Where data are available, programming expenses are further broken down into broadcast rights, news, and other programming expenses. Affiliates and independents were examined separately because affiliates' program acquisition arrangements with the networks make their cost structure different from independents'.

TABLE 14
PROGRAMMING EXPENSES OF COMMERCIAL BROADCAST STATIONS, 1975-1989
(Percent of Total Expenses)

	1975	1980	1985	1989
AFFILIATES				
Programming	42.8	42.5	43.8	44.3
Broadcast Rights	12.1	11.5	11.8	18.0
News	--	--	20.6	19.1
Other	--	--	11.4	7.2
INDEPENDENTS				
Programming	48.8	49.4	52.5	57.1
Broadcast Rights	26.8	32.6	39.2	43.4
News	--	--	4.3	4.3
Other	--	--	9.0	9.4

SOURCES: 1975 and 1980, FCC, Public Notice, "TV Broadcast Financial Data," August 2, 1976 and August 10, 1981; other years, NAB, Television Financial Report, 1986 through 1990.

NOTE: For consistency, expense categories from the FCC reports were used. The NAB categories of "programming and production" and "news" were combined into "programming." "Broadcast rights" includes features, amortization of all syndicated programs, specials, sports events, and barter programming.

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44 Noll, Peck, and McGowan, Economic Aspects of Television Regulation, pp. 71-80.

For both network affiliates and independents, programming is by far the largest expense item, averaging over 50 percent of total expenses for independents at least since 1985.[45] Programming expenses are a lower percentage of the total for affiliates because they do not pay for network programming with cash. On the other hand, affiliates spend far more for news, about 19 percent of the total as compared with about 4 percent for independents.

Programming expenses as a percentage of the total appear to have increased slightly for affiliates and considerably, 8.3 percentage points, for independents over the period. For affiliates, the share of broadcast rights has increased much more rapidly than all program expenses. Clearly increasing costs of broadcast rights contributd substantially to the decline in broadcast station profits over the period.

Stations appear to devote only a small percentage of total expenditures to local programming. Excluding news, program expenditures other than those for broadcast rights were less than 10 percent of total expenditures in 1989 for both affiliates and independents. For independents, program expenditures, even including news, for anything other than broadcast rights were less than 14 percent of the total. Moreover, the figures in table 13 suggest that even these expenses were disproportionately incurred in large markets.

SUMMARY

The number of broadcast stations, particularly UHF independents, has increased greatly in the past decade, largely because cable carriage has reduced the disadvantage of UHF relative to VHF stations and thus increased their potential audiences. At the same time, broadcast station audiences are declining. Viewing hours per household appear to be declining. Cable households view less over-the-air television than non-cable households, and the share of cable-originated services in their viewing is increasing. In households with pay cable services, less than half of viewing is accounted for by broadcast television. Prime-time network audiences have been falling since 1980; affiliates' audiences appear to have been falling faster during non-network time periods than during network-programmed periods. While viewing of independent stations as a group has increased, average per-station viewing has fallen because of the increased number of independent stations.

Broadcasters' revenues fell over much of the late 1980's while programming costs increased, resulting in declining profits or increasing losses for all classes of stations, with heavy losses concentrated among UHF independents and small-market stations. Independents appear to have had a reprieve in 1989. Unless the longer-term trend reverses, a shakeout could

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45 Comparing this finding with table 13 makes clear that large-market stations swamp small-market stations in the data.

well occur. Changes in revenues appear to have lagged behind changes in viewing: while network audiences have been falling at least since 1980, affiliates' revenues peaked in 1985-86. The lag in the advertising market suggests that current declines in audiences will result in further declines in revenues in years to come.

Great differences emerge in costs, revenues, and profits between large-market and small-market stations. Stations in large markets on average appear to have revenues and expenses many times as large as those in small markets and to enjoy high but falling profits. The level and structure of the costs of large market stations suggests that they have considerable leeway to reduce costs if revenues fall. Marginal stations in large markets, however, may not have the same ability to reduce costs. In intermediate-size markets, cost-cutting also appears to be possible; some small-market stations may have little room to cut costs.

V. TECHNOLOGICAL ISSUES

Several new technologies may radically change the economics of video distribution and the range of services delivered. Video compression is the development likely to have the biggest impact in the coming decade. Video compression technologies offer the potential to expand greatly the capacity of video distribution systems. While video compression is likely to be utilized first for satellite program distribution, it is applicable to cable and terrestrial transmissions as well. Another potentially important technology now under development is high definition television (HDTV), which would provide substantially better picture and sound quality.

Interactive services (i.e., those utilizing two-way communications) is a third area of technological development that will permit enhanced offerings of services available today such as pay-per-view and home shopping. Should significant demand for additional interactive services develop, interactive capacity will be an important determinant of the popularity of the various delivery systems.

A fourth important area of technological change is signal encryption. Any distribution system that relies even in part on subscriber fees must have an adequate method of controlling access to the product. In a wide range of applications, this means encrypting the signal. Video service providers are confronting, and will continue to confront, issues relating to the security and cost of encryption systems.

This chapter discusses the technology developments outlined above. Video compression is examined first, followed by HDTV, interactive television, and encryption.

VIDEO COMPRESSION TECHNOLOGIES

Digital video compression is a signal processing technique that permits transmission of a television signal using significantly less bandwidth than is currently needed (6 MHz for terrestrial broacast signals and cable and 24 MHZ for satellite signals). Digital video compression technology is applicable to all of the video delivery systems -- satellite, cable, broadcast, and wireless cable. For a given compression ratio, twice as many NTSC signals can be transmitted via a 24 MHz satellite transponder as via a 6 MHz terrestrial channel. Compression methods now under development promise to permit as many as eight standard NTSC television signals to be carried on a single satellite transponder.[46]

The technical details of compression technology are beyond the scope of this paper. However, the key effects of video compression will be a substantial increase in channel capacity and a concomitant reduction in the cost of a channel. As a consequence, delivery systems that utilize compression will be able to offer a substantial degree of time diversity. This could mean separate feeds of cable and broadcast networks for each time zone in the United States, and it could also mean staggered starting times for pay-per-view exhibitions of popular movies. In other words, a pay-per-view programmer could transmit a box office hit several times each night, with starting times every fifteen minutes or half hour of prime time. Since viewers would never have to wait very long for their chosen movie to begin, this service can be characterized as "near video on demand."[47]

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46 This satellite transmission compression ratio translates into a four-to-one ratio for terrestrial transmissions. Leland L. Johnson and Deborah R. Castleman, Direct Broadcast Satellites: A Competitive Alternative to Cable Television?, R-4047-MF/RL, (Santa Monica, CA: RAND Corp., 1991) ("RAND DBS Report"), pp. 51-59. See also Cable World, March 18, 1991, p. 9.

47 Chapter VI contains a more extensive discussion of near video on demand and timeshifting in general. An alternative to near video on demand is pure video on demand, which would allow a subscriber to dial up a movie or other program at will. The technology to provide video on demand appears very expensive and is not yet commercially available. Leland L. Johnson and David P. Reed. Residential Broadband Services by Telephone Companies? Technology, Economics, and Public Policy. R-3906-MF/RL, (Santa Monica, CA: RAND Corporation, 1990) ("RAND Broadband Service Report")

Video on demand requires switching capability, as well as at least a fiber optic backbone and some fiber distribution plant and a link to the home that can carry a few switched video lines (to accommodate simultaneous on-demand viewing of multiple programs) in addition to capacity for the package of dedicated channels now used to supply cable programming to subscribers.

Whether it were provided by a cable operator, or even a telephone company, it is not clear if sufficient demand exists beyond near video on demand to justify the investment. For this reason, several firms are now

The reduction in the cost of channel capacity will also lower the barriers to entry for new channels. As a result, it is likely that more special interest or "niche" channels will develop. A related possibility is the "home shopping mall," which would consist of a group of home shopping channels, perhaps as many as 20 or 30, specialized by product offered.

Compression will also likely facilitate the introduction of HDTV. HDTV will require transmission of much more information per frame than standard NTSC. At present, it appears that no more than two, and possibly only one, HDTV signal can be transmitted per terrestrial channel or satellite transponder.[48] However, compression can free up capacity for HDTV transmissions by allowing consolidation of the NTSC transmissions onto fewer channels. It is worth noting that most of the contenders for the United States HDTV terrestrial transmission standard are now digital systems.

In the satellite arena, compression could interact with other technical factors to make DBS more feasible. One of the selling points of DBS is compact, inexpensive receiving equipment. Hence, in the absence of compression, to receive more than the 32 channels assigned to each orbital slot,[49] DBS reception equipment would have to be "tunable," i.e., it would have to be possible to adjust the dish antenna so it pointed at different satellites. It is, of course, possible to adjust the position of the dish antenna. However, equipment to do so accounts for a significant share of C-band system cost. Similar equipment to adjust a much smaller DBS dish would likely require additional precision and cost more. Moreover, it would obviously rule out the scenario of a flat, unobtrusive antenna stuck onto the living room window of one's home. On the other hand, a four-to-one compression ratio would yield 128 channels per orbital slot and an eight-to-one ratio would yield 256. At this level of channel capacity, the subscriber would not necessarily need to adjust the position of the dish. Customers could, however, switch to a provider using another orbital slot, but the new hookup might entail a service call from the satellite dealer to "repoint" the antenna.

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conducting market research to determine the demand for switched video and the exent to which it would substitute for near video on demand and other subscription services. AT&T, TCI, and US West will offer 450 customers video on demand and "enhanced pay-per-view" (50 channels, with time diversity), while GTE's video on demand test involves four households. See Communications Daily, May 6, 1991, p. 2 and June 18, 1990, p. 6.

48 RAND DBS Report, p. 51.

49 E. E. Reinhart, "Satellite Broadcasting and Distribution in the United States," Telecommunications Journal 57, No. VI (June 1990)("Reinhart"), p. 413.

Compression also offers the possibility of substantial channel capacity expansion to cable operators.[50] It can be applied either with or without the introduction of fiber optics into the system. On the other hand, fiber is increasingly being used for high-capacity "backbone" in cable systems. This allows significant expansion of channel capacity, because the coaxial cable used to make the final connection to the subscriber's home is capable of carrying as many as 100 to 150 channels over a short distance. If the coaxial cable link is short enough, the signal can be transmitted without amplification.[51] If compression, using a four-to-one ratio, were combined with fiber-coax hybrid systems, a cable system could offer as many as 600 channels.

Compression can also be used with cable systems that utilize only coaxial cable. With the same four-to-one ratio assumed above, a 25-channel cable system could be upgraded to 100 channels and a 54-channel system to over 200 channels. Moreover, the cost of the compression equipment is relatively low. Although no digital video compression converter boxes are on the market yet, they are under development. Cost estimates are in the $100-$200 range.[52] In addition to new customer premises equipment, compression will require some new hardware at the headend, but its cost also appears low, by one estimate as low as $200 per subscriber to upgrade systems to 100 or more channels within two years.[53] This represents a significant savings, since the same source estimates that, without compression, the best option for upgrading would be to 60 or more channels over five years for $300-$600 per subscriber.

Digital compression is also applicable to terrestrial broadcasting, with the posibility that a compression ratio of four-to-one or more is achievable. Thus, a market with ten broadcast channels could expand to at least 40 channels for viewers with the appropriate reception equipment. In this environment, the Commission might well wish to re-examine its dual networking rule. This rule, in essence, prohibits any firm from operating more than one television broadcast network. The ability to obtain packaged programming from multiple suppliers is particularly important in the compression context, since it is likely that only a small share of the new capacity will be filled by locally produced programming. On the other hand, to the extent that compressed video channels were offered on a subscription basis, they might not

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50 Firms that are developing compression technology for satellite use are also seeking to adapt their systems for cable use. See Cable World, March 18, 1991, p. 66 and April 1, 1991, p. 27.

51 Time Warner has announced plans to upgrade its Queens, New York cable system to 150 channels using this technique. Communications Daily, March 8, 1991, p. 3.

52 See Satellite Business News, April 3, 1991, pp. 1, 22; Broadcasting, April 8, 1991, p. 66; Cable World, March 18, 1991, p. 9.

53 Communications Daily, April 12, 1991, p. 3.

constitute broadcasting at all, and thus might not be subject to the dual networking rule.[54]

Currently over 40 percent of television households rely on free over-the-air television for their video programming. For those households, investment in the additional equipment needed to receive compressed video may not be immediately attractive. Because households that did not make such an investment would lose service if local broadcast stations adopted video compression, it is likely that compression will not be initially adopted for broadcast transmissions.[55] It is more likely to be introduced along with HDTV, since a new receiver will be required in any case for HDTV and most of the leading candidates for the American HDTV transmission standard are now digital.

HIGH-DEFINITION TELEVISION

High-definition television is a term used to describe technologically-advanced television systems now under development that will greatly improve the picture and sound quality of television signals. HDTV systems will have a larger number of horizontal scanning lines, better color fidelity, freedom from various artifacts of the transmission system, and a wider aspect ratio (ratio of width to height) than conventional television. New television receivers will be needed to view the improved-quality signal, though FCC rules require that the programming be receivable on conventional receivers through simulcasting.[56] HDTV has been hailed as the first major improvement in television technology since the advent of color.

The likelihood of success for HDTV has been a subject of controversy. Some advocates have seen HDTV as an engine for revitalizing the American consumer electronics industry, and many see a large consumer market for HDTV.[57] On the other hand, the receiving equipment will be expensive--possibly as much as $3000 initially--and viewers will need very large screens to be able to appreciate the improvement in picture quality. So the extent of consumer acceptance of HDTV in the short run is unclear.

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54 See Subscription Video Report and Order.

55 On the other hand, cable and satellite distribution systems could introduce compressed video by replacing their subscribers' converters and raising the customer premises equipment rental fee component of the monthly subscription bill.

56 Tentative Decision and Further Notice of Inquiry, MM Docket No. 87-268, 3 FCC Rcd 6520 (1988) at 6531; statement of Chairman Alfred C. Sikes to the Advisory Committee for Advanced Television, March 21, 1990.

57 The Scope of the High-Definition Television Market and its Implications for Competitiveness, Congressional Budget Office Staff Working Papers, July 1989.

For broadcasters, the cost of HDTV transmission equipment will be substantial. Recent studies estimate that for a large-market station, $1.5-$2.0 million would be required to transmit a network signal, and $10-$12 million would be required for local production capability.[58]

An Advisory Committee to the FCC is preparing to test HDTV systems to make recommendations to the Commission concerning adoption of technical standards for terrestrial broadcasting. The Commission expects to choose a standard by mid-1993. Service will begin in mid-1995 at the earliest. By the most optimistic current projections, penetration of receiving equipment will not reach 1 percent of television households by the year 2000.[59] So, according to these projections, HDTV will not have an appreciable effect on the television marketplace during the period covered by this study, though it may be widely adopted shortly thereafter.

Since HDTV is a service that, at least at first, is likely to have small audiences but to be highly valued by its viewers, it is most likely to be introduced by a medium that allows direct viewer payment. HDTV is likely to be offered first on prerecorded videocassettes. DBS also appears to be a particularly promising early delivery medium for HDTV because it can aggregate small audiences on a nationwide basis, and because the cost of HDTV transmission equipment would only have to be incurred once for the whole nation. Cable will probably also offer HDTV before over-the-air broadcasting.[60] In principle HDTV could be introduced by these media without waiting for the FCC to set standards, though in practice

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58 "Estimates of TV Stations' HDTV Conversion Costs Cut by 2/3," Communications Daily, October 5, 1990, p. 2.

59 Videocassette recorders required between seven and eight years and color television receivers required eight years to reach 1 percent penetration. "Economic Potential of Advanced Television Products," report by Larry F. Darby Associates for the National Telecommunications and Information Administration, April 7, 1988. Research for Working Party 5 of the Planning Subcommittee of the Advisory Committee on Advanced Television Service indicates that only under the most optimistic assumptions does the rate of adoption of HDTV approach those of color TV or VCRs. Memorandum from Scott Frederick to Michael Tyler, "Revised Projections of ATV Receiver Cost and Penetration Rates for Discussion by the FCC Working Party," August 16, 1990. Demand for HDTV receivers, however, will almost certainly be highly sensitive to price, and developments in all-digital technology that have occurred since the forecasts were made may reduce receiver costs enough to increase the rate of adoption.

60 S. Merrill Weiss, "Rolling Out Advanced Television in the United States: A Broadcaster's Perspective," Broadcast Cable Financial Journal, March-April 1991, p. 28.

compatibility with terrestrial broadcasting appears important enough to cause other media to wait and adopt the broadcast standard.

Since early audiences will be small, and even in the long run HDTV may not increase broadcast audiences, broadcasters' primary incentive to adopt HDTV will be the necessity to meet competition from other media. Broadcasters probably will adopt HDTV after penetration of receiving equipment is high enough to make an advertiser-supported service profitable. Broadcasters may perceive HDTV as a large additional expense that is necessary to meet competition but that probably will not increase audiences or advertising revenues.

Incremental improvements in television picture quality may become available before full-fledged HDTV. For instance, Faroudja Labs has developed a technique for improving the picture and sound quality of NTSC signals. Faroudja claims that its system, unlike so-called enhanced-definition (EDTV) systems, is consistent with the NTSC standard and so may be introduced with little or no Commission action.[61] Faroudja has announced that television sets to receive its SuperNTSC system could be available within two years.[62] Encoders required for broadcasting are ready now. Since SuperNTSC capability is expected to add only $300 to the cost of a conventional NTSC receiver, and equipment required by broadcasters might cost $10,000, the system might be attractive to consumers and broadcasters. As in the case of HDTV, however, consumer demand for such an innovation is difficult to predict. In the long run such an incremental improvement in quality would probably have little effect on competition among broadcasters or between broadcasting and other media because the changes could be adopted readily by all the media.

INTERACTIVE TELEVISION

Interactive television is a service in which the viewer communicates with the programmer/transmittor, whether to select program content or to send some other message. Interactive services could include transactions such as banking or home shopping. One special case of home shopping is the pay-per-view event. Viewers can choose, in advance or on the spur of the moment, to watch a recent movie or sporting event. Currently, most pay-per-view revenue

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61 The Commission has determined that it will select an EDTV system, if at all, only after it selects a simulcast HDTV system. Statement of Chairman Alfred C. Sikes to the Advisory Committee for Advanced Television, March 21, 1990.

62 "Faroudja to Bypass HDTV Test Process, Begin Immediate Commercialization," Communications Daily, September 12, 1990, p. 2.

comes from sporting events, such as boxing matches,[63] but the advent of near video on demand or video on demand could well increase interest in pay-per-view movies.

One frequently mentioned future interactive application is viewers choosing camera angles in sporting event telecasts. Interactive video plus video compression could allow the viewer to "direct" his or her own telecast of a football game or other sporting event. Interactive television could also be used for polling viewers on various subjects, ranging from local or national political issues to how to end a television program to voting for contestants in a talent contest.

The "return channel" that viewers use to transmit messages can be, but does not have to be, integrated with the video distribution system. In the 1970's and early 1980's, Warner Cable experimented with an interactive system known as "Qube" on its Columbus, Ohio cable system and others.[64] Recently the FCC has proposed to allocate a small amount of spectrum, just above television channel 13, for two "viewer response channels." This proposal would permit two television licensees in each market to offer interactive broadcast services to viewers equipped with miniature radio transmitters attached to their television receivers.[65]

The telephone provides a non-integrated interactive capability. In recent years, telephone companies have developed automatic number identification systems that allow them to process thousands of requests in a few seconds. This provides "impulse pay-per-view" capability. In other words, viewers can decide at the last minute to order a pay-per-view movie. While cable and terrestrial broadcasting will be able to offer either integrated or non-integrated return channels, telephone return channels are the only means of interaction currently available for satellites.

The value of the return channel is related to the range of interactive services offered, which is, in turn, a function of the distribution system's

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63 A Paul Kagan Associates study indicates that, in 1990, boxing and wrestling accounted for 89 percent of gross pay-per-view revenues. The total gross revenues for the events studied was $136.5 million, with wrestling accounting for $72.5 million and boxing $48.6 million. See Broadcasting, Feb. 18, 1991, p. 49. Table 16 below shows 1990 pay-per-view revenues to cable operators of $417 million. Presumably the $136.5 million represents revenues to the rights holders.

64 See Edward Meadows, "Why TV Sets Do More in Columbus, Ohio," Fortune, Oct. 6, 1980, pp. 67-73 and "Qube services to be dumped if TCI buys Warner Amex's Pittsburgh system," Broadcasting, April 16, 1984, pp. 94-95.

65 Notice of Proposed Rulemaking in Gen. Docket No. 91-2, 6 FCC Rcd 1368 (1991).

channel capacity or switching capability. For example, in the broadcast television case, a single channel of video is being transmitted to all viewers, so the transmission cannot be customized on a household-by-household basis in response to information provided via the return channel. Hence, interactive broadcasting will most likely be used for home shopping or polling.[66]

With multichannel media such as cable or satellite, the return channel can serve the additional purpose of selecting a particular transmission for reception by a particular viewing household. Thus, in the case of a pay-per-view movie or near video on demand service, the return channel is used to place an order. The viewer's camera angle choice example is similar. One might order this service for the Super Bowl, and have the ability to choose at will among eight or ten different "feeds" of the game.

For services that entail placing a single order but do not require a continuing series of interactions, it is not clear that a return channel more sophisticated or dedicated than a telephone line is needed. Video on demand scenarios frequently include the capability to "dial up" a movie from a library of many titles. While this is a more sophisticated and versatile service, a telephone return channel still appears adequate. There are some continuing interactions, such as video games or catalog shopping, for which a dedicated return channel seems efficient. On balance, though, the need for interactive capability beyond that provided by telephone lines is not clear.

ENCRYPTION SYSTEMS

Any video service provider wishing to charge viewers for its service must be able to control access to that service. For satellite or terrestrial transmissions, in practice this means encrypting the signal and installing a conditional access system.[67] Encryption is important in the cable context as well. First, it is possible to tap into cable systems without authorization. Second, when different signal complements (e.g., tiers of basic services, premium channels, or pay-per-view events) are delivered to different subscribers, it is necessary to limit subscribers to services they

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66 However, the interactive video data service that the Commission has proposed could be used for two-way communications, and the Commission has analogized it to interactive computer services such as PRODIGY and COMPUSERVE that provide information and services via telephone lines to personal computer users. See Notice of Proposed Rulemaking in Gen. Docket No. 91-2, 6 FCC Rcd 1368 (1991), para. 9; Reply of TV Answer, Inc., RM-6196, filed July 13, 1990; TV Answer, Inc., Submission of Information As Requested by the Commission Staff, RM-6196, filed Nov. 16, 1990; DBS News, May 1991, p. 6.

67 Encryption and decryption refer to the process of "scrambling" and "descrambling" the signal, while conditional access refers to the process of authorizing particular subscribers to decrypt particular packages, channels, or transmissions.

are authorized to receive. Although single channel subscription services have been offered in the past, it appears that subscription services are only viable as part of a package over which the costs of encryption, decryption, and conditional access can be spread.

The choice of an encryption system or systems affects the number of households willing to purchase subscription services. Hence, this choice also affects the degree of competition that broadcast television will face from subscription services. First, programmers will not continue to supply their product to distribution systems without reasonably secure encryption and conditional access systems; unfortunately, there are no foolproof systems.[68] Second, the choice of encryption system or systems affects the cost of reception equipment, whether it be a cable converter box or a satellite integrated receiver decoder. Equipment cost is a determinant of the price subscribers must pay for subscription services. In particular, if multiple, incompatible encryption systems are in use, equipment that can decode all services will likely cost more than if only a single system is in use.[69] When

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68 Theft of services is a significant problem both in the cable and the HSD context. In addition to reducing the revenues of cable operators and programmers, it also results in higher prices to legitimate customers. The impact of theft of services, colloquially referred to as "piracy," is greater in the satellite context. The conservative estimates are that 50 to 60 percent of those receiving scrambled satellite services are stealing them. See Report in Gen. Docket No. 89-78, 5 FCC Rcd 2710 (1990) ("FCC Encryption Standards Report") para. 39. In the cable case, the corresponding figure is roughly 13 percent. This calculation is based on 8 million households receiving basic cable service without authorization and 51.6 million basic cable subscribers. See Cable World, Jan. 21, 1991, p. 10 and table 15 below. By contrast, there are 710,000 legally authorized home satellite dish subscribers. See note 113 below.

69 Most satellite cable programming services are now encrypted using the Videocipher II technology. FCC Encryption Standards Report. Because programmers have powerful incentives to make their wares available to as many households as possible, they will be likely to address any problems of incompatible encryption standards that may arise. The options for dealing with such issues include adoption of a voluntary standard, simulcasting programming in different formats (the practicality of this option will be enhanced by the reduction in transponder costs that video compression is likely to bring), and pursuit of technologies to reduce the cost of a "multi-standard" decoder. One such technique would be adoption of a standard decoder interface. This would allow interchangeability and manufacturers could offer receivers with multiple standard encryption ports for maximum flexibility. The "smart card," a cartridge that can be inserted in the back of a decoder to change the manner in which the decoder is authorized to receive scrambled services, could be used with the standard decoder interface in a multiple encryption standards environment, or to restore security to a compromised encryption system. The smart card offers the possibility to make theft of service unprofitable by permitting relatively inexpensive security upgrades, either

an encryption system is compromised, it can either be scrapped or repaired. In either case, subscribers face additional costs -- purchasing a new decoder or paying for an upgrade of the old one. Thus, system security affects equipment costs too.

SUMMARY

Digital compression is the technological factor that almost certainly will have the biggest impact on the video delivery marketplace over the next ten years. It will allow for greatly expanded capacity on all media and will reduce the cost of channel capacity, thus spurring the development of new, competitive program channels, many of them narrowly focused. Compression will be implemented first for satellites (within the next year), then for cable (in a few years), and last in broadcast television (probably not until broadcast HDTV is deployed).

It is impossible to forecast the rate of diffusion of HDTV with precision. However, because , in the early years, home receivers will be expensive, adoption is likely to be slow. Moreover, at the beginning, the lack of HDTV receivers will make HDTV broadcasting unprofitable, while the lack of programming will retard the purchase of HDTV receivers. This, plus the cost of HDTV broadcast transmission equipment, makes it likely that HDTV will be introduced first by prerecorded tapes and then by satellites, which can aggregate audiences efficiently over large geographic areas. The practical impact of HDTV on broadcast television by the end of the decade will be small.

With respect to interactive television, in the absence of switched video, little appears to be gained by having a dedicated return channel. The common telephone line appears to be sufficient, and there is no evidence that a dedicated return channel, given the amount of time it would be used, would be cheaper than the public switched network. The remaining question is the demand for services that can be delivered by a cable or satellite system and requested by a telephone call. The utility of interactive broadcast services will be limited by the relatively limited channel capacity available.

Encryption technology facilitates or permits the operation of subscription services, which compete with broadcast television. The technology, particularly in the satellite area, is evolving toward flexible systems that can be upgraded at relatively low cost in the event of a security breach. In the event that satellite programmers adopt incompatible encryption technologies, incentives will exist to develop multistandard decoders.

Overall, technological developments are likely to increase competition to broadcasters. Expansion of channel capacity will benefit nonbroadcast media disproportionately, allowing them to offer more time diversity, as well

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at regular intervals or in response to specific breaches in the encryption system.

as additional targeted programming. Technological considerations per se do not change the most likely scenario for broadcast television over the next ten years--a continuing gradual decline in viewing shares. However, if some of the new services technology will make available turn out to have a fundamental effect on the way people watch television (e.g., if pay-per-view is wildly successful) the potential exists for a more rapid erosion of broadcasting's share. On the other hand, these technologies may permit television broadcasters to become multichannel, multi-revenue stream competitors.

VI. CABLE TELEVISION

Cable television constitutes by far the most significant rival to broadcast television today, and is likely to remain so over the next ten years. Cable systems began in areas with poor off-air television reception, and at first primarily offered improved reception of existing broadcast signals or imported a few distant signals. The advent of satellite program delivery to cable headends made possible the nationwide distribution of both broadcast signals and cable networks. The additional programming created a demand for cable even in areas with good over-the-air reception. The major urban areas of the country were generally cabled following the development of these national program services, in part because abundant off-air television service limited demand and in part, perhaps, because construction costs are higher in urban areas. Cable subscribership remains lower in most large urban areas as well.[70]

HISTORICAL DATA AND PROJECTIONS

Table 15 provides historical data on cable availability, subscribership, and penetration for the two main categories of cable television service--basic and pay.[71] Projections of basic cable availability and basic cable subscribership for 1995 and 1999, made by Paul Kagan Associates, are also included. Penetration refers to subscribership as a fraction of some universe of households. Thus, "basic cable penetration of homes passed" is basic subscribers as a fraction of homes passed.

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70 In 1990, cable penetration was below the national average in seven of the top ten markets. Television and Cable Factbook, 1990, Services Volume, pp. C-340, C-337-38.

71 The third category, pay-per-view, which is not currently significant, is discussed later in the chapter.

TABLE 15
CABLE SUBSCRIBERS AND HOMES PASSED

	1976	1980	1985	1990*	1995**	1999**
Basic Cable						
Television Households (TVHH) (Millions)	69.6	76.3	84.9	92.1	98.3	102.7
Homes Passed (HP) (Millions)	23.1	34.9	64.7	84.0	91.4	95.7
Basic Subscribers (Millions)	11.8	19.2	36.7	51.6	61.0	67.5
Homes Not Passed (Millions)	46.5	41.4	20.2	8.1	6.9	7.0
Homes Not Subscribing (Millions)	57.8	57.1	48.2	40.5	37.3	35.2
Homes Passed/TVHH (%)	33.2	45.7	76.2	91.2	93.0	93.2
Basic Subscribers/Homes Passed (%)	51.1	55.0	56.7	61.4	66.7	70.5
Basic Subscribers/TVHH (%)	17.0	25.2	43.2	56.0	62.1	65.7
Homes Not Subscribing/TVHH (%)	83.0	74.8	56.8	44.0	37.9	34.3
Pay Cable						
Pay Units (Millions)	1.0	9.1	30.6	41.8	49.4	54.7
Pay Units as % of Basic	8.5	47.4	83.4	81.0	81.0	81.0
Pay Households (Millions)	--	13.8***	21.8	24.0	--	--
Pay Households/HP (%)	--	33.0***	33.7	28.6	--	--
Pay Households/TVHH (%)	--	17.3***	25.7	26.1	--	--

SOURCES: For 1995, 1999, Paul Kagan Associates, The Kagan Cable TV Financial Databook (June 1990), p. 10; TVHH, homes passed, basic subscribers for earlier years, Cable Television Investor (Nov. 21, 1990), p. 9, except 1976 TVHH from Television Bureau of Advertising, Inc., "Trends in Television," (April 1990), p. 3; pay units and households from Cable TV Investor, Nov. 21, 1990, p. 9.

*Estimated. **Projected. ***1981.

Basic cable service is a package of channels that generally includes some retransmitted broadcast signals (local and distant), some satellite-delivered cable networks, and some locally-originated cable channels (e.g., public access, educational, and government).[72] The broadcast signals and cable networks generally include advertising. The subscriber pays a flat fee for the entire package of channels. During the past year or so, many cable multiple system operators (MSOs) have "retiered" their cable systems,

72 In the Communications Act, basic cable service is defined as "any service tier which includes the retransmission of local television broadcast signals." 47 U.S.C. 522(2) See also 47 C.F.R. 76.5(ii).

i.e., divided basic service into two or more separately priced packages.[73] Subscribers are not required to purchase all basic tiers. Press reports suggest that this adjustment is motivated by apprehension that rising cable rates might spark reregulation and by concern over sharply rising carriage fees charged by a small number of particularly popular cable channels. Placing such channels on a separate tier makes it possible to pass on price increases only to those who value the channels.

Pay cable services are offered to subscribers on a per channel basis for an additional fee. They generally do not carry advertising. Examples include Showtime, HBO, the Disney Channel, and some of the regional sports channels.[74]

In 1976, roughly one-third of television households had access to cable (i.e., were "passed" by cable). In 1990, 91.2 percent of television households were passed by cable.[75] The share of homes with access to cable that choose to subscribe to basic service rose from 51.1 percent in 1976 to 61.4 percent in 1990. The consequence is an increase in the percentage of all television households that subscribe to cable from 17 percent to 56 percent.[76] The enormous growth in cable subscribership over the period was thus accomplished primarily through rapid construction of cable systems in

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73 For a discussion of retiering and the motivation for undertaking it, see Broadcasting, May 21, 1990, pp. 35-41.

74 Chapter II discusses the importance of direct payment for programming (or any product) as a mechanism for transmitting to producers information about consumer preferences and providing producers with proper incentives to supply programming closely matched to those preferences. In fact, for cable programming, with the exception of pay-per-view services, the information and incentive functions of prices are limited by the fact that viewers must purchase a bundle of services. This may be a bundle of channels (basic service) or a bundle of programs (a pay channel). Regardless of why cable operators undertake it, retiering can have the effect of restoring some efficiency to the information transmission mechanism. If all programs were pay-per-view, it would be possible for viewers to signal their valuations of those programs much more precisely than they can now. However, the transactions costs of assembling an individual schedule of programming appear excessive. Offering channels on an a la carte basis is an intermediate step, perhaps more practical, that would allow viewers to signal their preferences more accurately than they can now.

75 Other industry sources estimate a lower number of homes passed.

76 Neilsen figures for May 1991 indicate that 60.3 percent of television households subscribe to basic cable service. Communications Daily, June 17, 1991, p. 5. Arbitron data for November 1990 show 58.5 percent of households subscribing to basic service. See National Cable Televison Association, Cable Television Developments (March 1991) p. 1-A.

uncabled areas, accompanied by moderate growth in the percentage of homes passed that subscribe to cable. While penetration of pay services grew rapidly in the earlier years, it appears to have levelled off recently. Table 15 shows that between 1985 and 1990 the pay cable penetration of homes passed actually dropped. The number of pay households increased only modestly.[77]

The projections in Table 15 suggest that over the next decade basic cable subscribership will grow at a slower rate than in the past. The projections reflect a growth rate of basic subscribers of 5.5 percent in 1990 and 2.5 percent in 1999. The slower growth occurs largely, but not entirely, because very little of the country remains uncabled, and in much of the uncabled area, constructing cable systems would be prohibitively expensive. The projections assume that new homes passed subscribe at the same rate as in the past, but subscriber growth in homes already passed slows from 3.9 percent a year in 1990 to 2.0 percent a year in 1999.[78] Press reports speak of market saturation after 1991, so that declining growth rates appear plausible.[79] Although projections of the number of households subscribing to pay cable are not available, current trends seem likely to continue.[80]

Data are also available on penetration of homes passed in each of the 211 ADI markets, for December 31, 1989.[81] There are two markets in which penetration was above 90 percent, and an additional nine in which penetration was between 80 and 85 percent. The national average at this time was 59.6 percent. Penetration is presumably highest in those markets where the conditions favor cable television and where cable has been available for a relatively long period of time. These figures support the plausibility (although not the precise magnitude) of the projection in table 15 that 70.5 percent of homes passed in 1999 will subscribe to cable.

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77 Table 16 below indicates a similar pattern for pay cable revenues. From 1985 to 1990, their share in total cable operator revenues fell, while the increase in absolute magnitude was moderate. Competition from videocassette recorders and tape rental may explain this pattern. See chapter VIII below.

78 Paul Kagan Associates, Inc., "Cable TV Programming," August 31, 1990, p. 2.

79 "Cable Growth Pegged at 15 Percent," Multichannel News," January 7, 1991, p. 38.

80 Table 16 projects a modest increase in cable operator pay cable revenues and a declining share of those revenues in total operator revenues.

81 Paul Kagan Associates, Inc. ADI Cable Report: December 31, 1989, June 1990.

Table 16 provides information on the revenues of cable system operators. Roughly half of cable operators' revenues derive from basic subscription fees, which have grown rapidly since 1975. Pay cable fees have grown little in the past few years after growing rapidly between 1975 and 1985. Some in the industry attribute the flat revenues of pay cable to competition from VCRs. Pay-per-view for individual events is a new but growing source of revenue for cable operators. Cable advertising has grown rapidly, but remains only 3.6 percent of cable operators' revenues.

TABLE 16
CABLE OPERATOR REVENUES

	1975	1980	1985	1990*	1995**	1999**
Revenues ($ Million)						
Total	804	2603	9305	17874	28045	38401
Basic	764	1649	4353	9828	14953	20151
Pay	29	785	3787	5108	6501	7650
Pay Per View	--	--	--	417	1677	3913
Advertising	--	8	167	635	1500	2402
Other	11	161	998	1886	3414	4285
Percent of Total						
Basic	95.0	63.3	46.7	55.0	53.3	52.5
Pay	3.6	30.2	40.7	28.6	23.2	19.9
Pay Per View	--	--	--	2.3	6.0	10.2
Advertising	--	0.3	1.8	3.6	5.3	6.3
Other	1.4	6.2	10.7	10.6	12.2	11.2

SOURCE: Paul Kagan Associates, The Kagan Cable TV Financial Databook (June 1990), p. 10, 12, 70.
NOTES: Advertising is "national and local spot." Other includes: expanded basic, second set hookup remotes, etc. Estimated expanded basic revenues were $440 million in 1990.
*Estimated. **Projected.

The projections in table 16 suggest that the relative importance of basic cable revenues will not change much in the next ten years. In 1990, basic fees were 54.9 percent of total revenues, while they are projected to drop only to 52.5 percent in 1999. While pay-per-view revenues are projected to increase significantly in relative terms, from 2.3 to 10.2 percent of total revenues, this development appears to reflect a switch from pay-per-channel to pay-per-view programming. The sum of pay and pay-per-view revenue shares hardly changes, according to the projections, with a 30.9 percent composite share in 1990 and a 30.1 composite share in 1999.

Cable subscription revenue is a measure of the value viewers place on cable service. The magnitude of viewer payment for cable is strikingly large. Cable operator revenues, not including advertising, in 1989 were

63.5 percent of total broadcast advertising revenues. Including cable network and local cable operator advertising, cable industry revenues were 71.8 percent as great as those of the broadcast industry, or 41.8 percent of the broadcast-cable total.[82] Yet cable, including distant signals and superstations, accounted for only 32 percent of viewing in 1989/90[83], and cable advertising remains far below its potential level. Clearly cable has succeeded in earning much more revenue per viewer-hour than broadcasting.

THE COMPETITIVE IMPACT OF CABLE ON BROADCASTING

In order to predict the future competitive impact of cable on broadcasting, it is necessary to examine the number of television households that will not be reached by cable and the expected viewing of broadcast programming in cable homes. The projections for 1999, reported in table 15, include an estimate that 35.2 million television households, 34.3 percent of the total, will not subscribe to cable. According to the Kagan projections, 6.8 percent of television households will not have the option of subscribing to cable and 27.5 percent will be passed by cable but choose not to subscribe. In 1990, 35.2 percent of television households could subscribe but chose not to do so.

If it is assumed that approximately one-third of 1999 television households do not subscribe to cable, then, at least in principle, broadcasting will retain a considerable advantage over cable in terms of access to large audiences. But the advantage in penetration enjoyed by broadcast television will be more than offset by a decline in viewing if a large enough proportion of cable households shifts enough of its viewing from broadcast to cable. On the other hand, to the extent that it improves the reception of over-the-air stations, cable may increase the audiences of those stations above what they otherwise would have been.

Both cable subscribership and viewing patterns in cable households depend on the menu of programming offered by cable. The projections in table 15 are, presumably, based on some assumptions about the content of cable programming. The relatively modest predicted increases in penetration of homes passed suggests that radical changes in the nature and popularity of cable programming are not anticipated. Likewise, extrapolation of trends in audience shares reported in table 6 above also suggests evolutionary rather than revolutionary changes in cable programming.

In order to assess the plausibility of this pattern, it is worth examining the range of cable offerings available today and identifying

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82 See table 2 above.

83 See table 6 above. The cable viewing fraction for 1988/89 was 29 percent. See Cabletelevision Advertising Bureau, Cable TV Facts, 1990 ed., pp. 12-13.

developments that might change it in such a way as to affect the growth of cable relative to broadcasting. Changes that might increase the popularity of cable are more and better programming, innovations in payment mechanisms such as pay-per-view, increased channel capacity, and increased timeshifting capability. Miscellaneous other factors are also briefly discussed.

Prospects for New Programming

While basic cable channels as a group have a viewing share in the range of those of network affiliates, individual cable channels have, in general, much smaller audiences than network affiliates or stronger independent stations. The smaller audiences and revenues of basic cable networks have generally, despite viewer payment, resulted in less expensive programming than is shown on broadcast stations. As discussed below, increases in the revenues of existing cable networks, particularly their advertising revenues, can be expected to permit them to invest in more expensive programming. Such programming will further increase cable penetration, attract larger audiences, and, in turn, erode broadcast audience shares.

In 1990, program services available to cable systems included 73 nationwide basic networks, 14 regional networks, 24 regional sports networks, 9 pay channels, 8 home shopping channels, and 8 pay-per-view channels.[84] Cable operators clearly have a large number of services and a wide variety of program types from which to choose. Indeed, due to the number of local and distant broadcast stations cable carries, and the local public, educational, and government access channels it provides, few cable systems can carry all of the national and regional services.

Table 17 displays prime-time and all-day ratings for the first quarter of 1991 for the most popular cable television channels. The programming of three of the five most popular cable networks in prime time--WTBS, USA Network, and TNT--can fairly be described as similar to that of independent broadcast stations. They offer movies (some old and some new), sports, and entertainment series (some first run and some off network). Clearly, cable's popularity is not based solely on narrowcasting or niche programming. The other two most popular networks--ESPN and CNN--are, of course, more specialized. Moreover, Nickelodeon, another specialized network (presenting childrens programming) is tied for fourth in the total day cable network ratings.

The strong demand for sports programming, and the important role of cable television in meeting it, are demonstrated not only by the performance of ESPN but also by the proliferation of regional sports channels. ESPN,

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84 Network Fin/Syn Comments, Volume I, pp. 76-78. See also Report in MM Docket No. 89-600 ("FCC Cable Report") 5 FCC Rcd 4962 (1990), para. 43 for an estimate that there were 181 existing and proposed pay television and satellite cable services.

TABLE 17
CABLE NETWORK RATINGS, FIRST QUARTER 1991

	Prime Time	Total Day
CNN	3.7	2.9
WTBS	2.4	1.6
USA	2.4	1.3
TNT	1.5	0.9
ESPN	1.4	0.7
Lifetime	1.2	0.7
Nashville Network	1.1	0.5
Discovery	1.0	0.5
Nickelodeon	1.0	0.9
Family Channel	0.8	0.5
Headline News	0.7	0.6
MTV	0.6	0.5
VH-1	0.2	0.2

SOURCE: Multichannel News, May 6, 1991, p. 19 and May 20, 1991, p. 56, citing Nielsen Media Research.

the major national sports network, is available in virtually all cable households. This, and its high ratings (by cable standards), suggest that a substantial proportion of cable subscribers value it highly. The emergence of regional sports channels has been one of the most striking cable programming developments of the past several years. There are now 31 such channels, with 39.1 million subscribers.[85]

Cable networks can earn more revenue than broadcasters from audience of equal sizes. For basic cable networks, this is because they collect fees from both advertisers and subscribers. For pay networks, it is because viewers value programming more highly than advertisers value viewers.[86] This makes it possible for cable to outbid broadcasters for national or regional rights to programming, such as sports, where cable audiences are large. Some sports programming on cable did not and would not appear on broadcast television, but some of it has "migrated" or has been "siphoned" from broadcast television. The National Football League (NFL) packages on ESPN and TNT are the best but not the only examples of this phenomenon.

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85 Twenty-six of these are affiliated with either the Prime Network or Sportschannel America (SCA), both of which have a national feed with some regional selections. Programming from SCA is available to dish owners. Cablevision, January 28, 1991, p. 41; March 11, 1991, p. 30.

86 See chapter II.

The NFL contracts with cable networks have increased the number of games available nationally to those with cable service. Moreover, because those contracts require the cable services to make their NFL games available to broadcast stations in the home markets of the teams that are playing, home town fans without cable service are not deprived of access to their teams' games. On the other hand, ESPN's multi-year contract with Major League Baseball increases the number of games available nationally to cable subscribers, but it has exclusivity provisions that have caused some over-the-air viewers to lose access to some baseball telecasts.

If a substantial additional amount of sports programming leaves broadcast television for cable, broadcast audiences could be reduced significantly.[87] Such migration of sports events to cable raises issues of access and income distribution. To the extent that events previously available via broadcast television move to cable, households passed by cable end up paying for something that was previously available free. This constitutes a redistribution of income from consumers to the sports leagues and players and, to a lesser extent, to the cable networks. To the extent that homes not passed by cable had broadcast service available prior to the migration, a loss of access to the events in question and a loss of welfare to those households occurs. The structure of the professional sports leagues suggests that the additional income is unlikely to affect the quantity or quality of football, baseball, or basketball games. The basic problem appears to lie in market power in the production of popular sports events, not in cable networks purchasing the programming.[88]

A look at planned or announced new basic cable services provides additional insight into the range of programming that will be available to cable subscribers in the future. These services include comedy networks, networks devoted to legal matters, children's networks, a science fiction network, a cowboy network, a landscaping network, and several others.[89]

Local programming, particularly news and public affairs, remains the single programming service provided by local broadcast stations that is not yet widely offered by cable. Recently, however, local cable news channels have begun to appear, making clear that cable systems can perform all the functions of local broadcasters. Some planned local cable news channels have delayed their launch for economic reasons, but it appears that many of

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87 It should be noted, however, that not all broadcast network sports programming has been profitable. See, e.g., Broadcasting, May 6, 1991, p. 19.

88 Political pressure is likely to keep at least some of the major sports events on broadcast television.

89 Network Fin/Syn Comments, Vol I, p 79.

these channels will, in fact, provide service in the future.[90] At the same time, economic factors have impelled some television broadcast stations to cut back their own news operations.[91]

Pay-Per-View

Pay-per-view programming may also affect the broadcast-cable balance. By charging for single highly-valued events, pay-per-view services come closer than conventional cable services to measuring consumers' tastes for programming, and can generate more revenues per viewer. Because of the higher revenues pay-per-view services generate, they may provide more expensive and more attractive programming. But since per-program fees discourage viewing, it is not yet clear to what extent they will affect the size of broadcast audiences. Pay-per-view events are now mostly movies or sporting events such as boxing or professional wrestling matches, along with some concerts; the overwhelming majority of pay-per-view revenues now come from boxing and wrestling.[92] Particular events are offered at scheduled times and subscribers place orders for them, generally in advance. With state-of-the-art equipment, orders can be accepted at the last minute as well.

Table 18 provides current data and projections regarding pay-per-view subscription activity. In 1990, about 19 percent of homes passed by cable, representing 30 percent of basic cable subscribers, purchased some pay-per-view service. Many of these subscribers purchased very little service; the average monthly pay-per-view revenue per pay-per-view subscriber in 1990 was only $2.25.[93] This is equivalent to at most one event per subscriber per

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90 "Mooney Urges Reregulation Fight," Broadcasting, April 1, 1991, p. 31. See also "Hearst Mines for Gold in California News," Broadcasting, April 22, 1991, p. 50; "Cox Hopes To Launch Cable News Channel This Year --With Broadcasters," Communications Daily, May 20, 1991, p. 4; "Time Warner Unveils Local News Channel," and "Other Hopefuls Still at Starting Gate," Cable World, May 20, 1991, pp. 1, 6. Most of these proposed channels appear to be in urban areas. It may be that access to a fairly large and concentrated audience is needed to make them viable.

91 Kevin Goldman, "More Stations are Signing Off on 11 p.m. News," Wall Street Journal, May 22, 1991, pp. B1, B9.

92 See note 63 above. One indicator of the potential of pay-per-view is the success of the recent Holyfield-Foreman boxing match, which earned between $55 and $60 million in pay-per-view revenues. Broadcasting, April 29, 1991, p. 39.

93 The Kagan Cable TV Financial Databook, June 1990, p. 10.

TABLE 18
PAY-PER-VIEW (PPV) SUBSCRIBERSHIP

	1990*	1995**	1999**
PPV Subscribers (Millions)	15.4	33.0	50.1
PPV Subscribers/Basic Subscribers (%)	27.9	54.1	74.2
PPV Subscribers/Homes Passed (%)	18.6	36.1	52.4
PPV Subscribers/TV Households (%)	16.7	33.6	48.8

SOURCE: Paul Kagan Associates, The Kagan Cable TV Financial Databook (June 1990), p. 10.
*Estimated. **Projected.

month. However, as table 16 indicates, the total amount of cable operator pay-per-view revenues was a substantial $417 million.

The projected monthly revenue per pay-per-view subscriber in 1999 is only $6.51. Considering inflation, this is probably equivalent to about two events per month. While the number of pay-per-view subscribers is projected to increase substantially, to roughly three-quarters of basic subscribers and one-half of total homes passed, total pay-per-view revenue of cable operators is projected to be only $3.9 billion, or 11.6 percent of total cable operator revenues, up from 2.6 percent in 1990.

Technical factors will undoubtedly affect the growth of pay-per-view service. One is the availability of the necessary addressable converters. In 1990, only 38 percent of basic subscribers had addressable converters; in 1999, 84.4 percent are projected to be so equipped. Also, since programmers and cable operators find it advantageous to be able to cater to the impulse buyer, the ability to process a large number of orders almost instantaneously is important. Various methods, including automatic number identification, have been developed to handle the last-minute bulges in orders. As these become more widely applied, the pay-per-view ordering process will become easier, which should spur demand.[94]

The projections of growth in pay-per-view subscribership reported in table 18 appear to be based on the assumption that the nature of the pay-per-view business will not change significantly. They suggest that pay-per-view will probably be used infrequently by large numbers of

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94 One proposed satellite service, SkyPix, plans to adapt its near video on demand satellite pay-per-view service for cable use. This would make it possible for subscribers without addressable converters, but with compressed video converters, to access impulse pay-per-view services. See Cable World, April 1, 1991, p. 27 and chapter VII below.

customers, and so will probably have little effect on broadcast viewing. However, the developments described below under the headings of increased channel capacity and timeshifting could change the nature of the pay-per-view business radically. The assumptions underlying the predictions in table 18 would then be irrelevant, and pay-per-view use would likely be well above the predicted levels.

Increased Channel Capacity

Channel capacity also affects the demand for cable service. Table 19 shows that cable system channel capacity has increased steadily over time. In 1983, the earliest year for which disaggregated data are available, 48.7 percent of cable subscribers were served by systems with 30 or more channels, while 21.9 percent had access to 12 or fewer channels.[95] In 1990, the comparable figures were 89.3 percent and 1.3 percent. Almost one-quarter of cable subscribers in 1990 had access to 54 or more channels. A small number of cable systems today offer 100 or more channels.

TABLE 19
CHANNEL CAPACITY OF CABLE SYSTEMS, SELECTED YEARS

	Percentage of Total Systems				Percentage of Total Subscribers			
	1975	1980	1985	1990	1975	1980	1985	1990
Channel Capacity								
54 and Over		8.6***	5.8	8.4	--	--	9.8	24.0
30-53	11.2*		35.9	50.4	--	--	54.8	65.3
20-29		18.1	27.5	14.3	--	--	12.3	7.3
13-19	10.4**	2.5	4.7	2.9	--	--	2.3	0.4
6-12	70.9	66.8	17.6	11.3	--	--	19.4	1.3
1-5	6.7	3.6	0.9	0.3	--	--	0.1	****
Not Available	0.8	0.4	7.7	12.4	--	--	1.4	1.7
Total Number of Systems/Subscribers	3,405	4,180	6,844	9,612	--	--	31,274,771	48,613,439

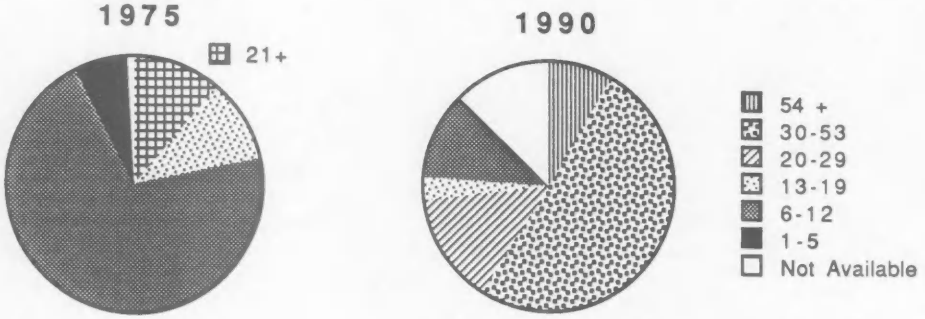
SOURCES: Warren Publishing, Inc., Television Factbook, 1990 ed., Cable and Services Volume, p. C-385; 1985 ed., Cable and Services Volume, p. 1385; 1980 ed., Cable and Services Volume, p. 86-a; 1976 ed., Services Volume, p. 73-a.

NOTE: 1985, 1990 are as of April 1; 1980 is October 15, 1979; and 1975 is September 1.

*21 and over **13-20 ***30 and over ****Less than 0.05

95 Warren Publishing, Inc., Television and Cable Factbook, 1982-83 ed., Services Vol., p. 1548.

FIGURE 8
CABLE SYSTEM CHANNEL CAPACITY



Capacity expansion is high on the agenda of most cable operators.[96] For example, Time-Warner has announced plans for a 150-channel system in New York that would offer interactive services and data information services.[97] Discussions of major capacity expansion stress new applications such as HDTV or video-on-demand rather than new forms of programming, though lack of channel capacity on cable systems appears to be an important impediment to the introduction of new program services. Expanded channel capacity, and the lower per-channel costs that it will make possible, will likely permit the development of new networks, in particular those aimed at narrow "niche" audiences as well as near video on demand services.

Increased Timeshifting Capability

Enhanced channel capacity (and enhanced satellite transponder capacity) will allow cable operators to offer significantly greater time diversity of programming to their customers.[98] For example, pay-per-view services could be enhanced by "near video-on-demand," a mode of delivery featuring multiple, staggered starts of programming such as recent movies.

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96 For the next several years, it is likely that digital signal compression, plus fiberoptic backbone, will be the preferred ingredients for enhancing cable system capacity. See chapter V above for a more extensive discussion of the technological options for capacity expansion.

97 "Time-Warner Constructing 2-Way Cable TV System," New York Times, March 8, 1991, p. D-5.

98 Cable networks and operators have touted the time diversity advantages of their service for a long time. Cable networks frequently exhibit the same program more than once per week.

This would not provide viewers with instant access to the movie of their choice, but would make it available with a limited waiting time.[99]

Increased channel capacity also offers the potential for timeshifting of cable network schedules, or of broadcast network and even station schedules. Premium networks such as HBO and Showtime currently offer two time zone feeds each (keyed to the Eastern and Pacific time zones). Added satellite capacity could make it economical for them to transmit Central and Mountain time zone feeds as well. HBO has announced an experiment to take timeshifting one step further.[100] It will provide three separate channels of HBO and Cinemax (a total of six channels). Cable operators will have access to them at no additional charge. Each channel of HBO will carry the same programming, but it will be transmitted at different times. The Cinemax channels will operate the same way. At a recent cable industry convention, the chairman of the Fox network suggested that viewers would place a high value on timeshifted broadcast network primetime programming.[101] This could comprise multiple broadcasts of programs or episodes during a week[102], as PBS frequently does now, or making available the entire prime time schedule, with staggered starting times, on multiple cable channels.

Other Factors

Many cable subscribers may watch local broadcast channels rather than cable channels out of habit and ignorance of what is available on cable. Over time greater familiarity with cable offerings can be expected to cause viewers increasingly to turn to cable. Events that draw attention to cable, however, such as CNN coverage of the Persian Gulf War, may accelerate the process of change, increasing both cable subscribership and viewing of

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99 Video on demand, discussed briefly in note 47 above, is unlikely to be available to many subscribers this decade. Currently, most pay-per-view revenues come from boxing and wrestling matches, for which there is not substantial demand for timeshifting. See note 63 above.

100 "HBO and Cinemax to Offer 3 Channels Each for Price of One," Communications Daily, May 9, 1991, p. 3. The Disney Channel plans to test a second channel to provide time diversity. Broadcasting, June 3, 1991, p. 52.

101 Communications Daily, March 26, 1991, p. 2.

102 ABC and Nick at Nite, a cable channel, have agreed to share a new situation comedy. Episodes will appear first on ABC and then, later in the same week, on Nick at Nite. Broadcasting, June 3, 1991, p. 33.

cable by subscribers.[103] A gradual shift in viewing patterns, however, is more likely than a radical change in the relative popularity of broadcast television and cable.

Willingness to subscribe to cable may also be sensitive to income. A small amount of evidence is available to support the conclusion that a smaller fraction of the very poor than of other income groups subscribes to cable.[104] This suggests that cable subscribership may rise over time with rising income. On the other hand, press reports indicate that the demand for basic cable has continued to increase rapidly despite the current recession, while pay cable revenues have stagnated and, in some cases, declined.[105] It is, of course, possible that increased videocassette rentals have cut into pay cable subscriptions and revenues. Basic cable may be a relatively affordable source of entertainment, even for those in the lowest income classes. For them, as well as for many with higher incomes, basic cable may have come to be considered a necessity, perhaps because it can substitute for more expensive forms of entertainment. As such, consumption may not vary substantially with the business cycle. Nevertheless, changes in the services offered by either cable or broadcast television, or reductions in basic cable rates, could attract additional subscribers.

SUMMARY

Now that most homes are passed by cable, future growth is likely to come primarily from expansion in penetration of homes passed. Therefore, the most likely scenario is gradually increasing cable penetration and viewing and additional gradual declines in the broadcast audience share. This is consistent with the projected doubling (in nominal terms) of cable operators' basic subscription revenues. Pay-per-view and advertising revenues will increase in relative importance, helping to produce a greater proportional increase in total cable operator revenues than in basic revenues.

On the other hand, it is possible that substantial expansion in cable channel capacity, the crucial technical development on the horizon, could change substantially the viewing habits of the American public. If demand for pay-per-view services or new niche services increases dramatically,

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103 But see Joan Sanchez, "Signs of Peace at CNN: Ratings Dropping, Tour Lines Hopping," Associated Press Wire, March 11, 1991. This article notes that CNN rtings have dropped from 9.4 on the night that the Persian Gulf war began to 2.2 by March 7, 1991. On the other hand, this still compares favorably with the network's 1990 average rating of 0.7.

104 Cabletelevision Advertising Bureau, Cable TV Facts, 1990 ed., p. 22.

105 Thomas R. King, "Slump Leads Pay TV to Fight Frill Image," Wall Street Journal, Feb. 7, 1991, p. B-1.

then the competitive position of broadcasting would deteriorate more rapidly. (Of course, viewing of prerecorded material and standard cable channels, basic and pay, would also be affected by such developments.)

Other programming developments, not tied so closely to technical factors, could also cause departure from the evolutionary pattern. Wholesale migration of sports programming to nonbroadcast media, or a significant expansion in the provision of local programming such as news by cable, could also cut into the broadcast audience. On the other hand, cable's growth could be slowed by loss of the compulsory license to retransmit broadcast programming. This possibility, discussed in more detail in chapter X, could not only raise cable operators' program acquisition costs, but, by providing broadcasters with a second revenue stream (from subscriptions or "retransmission fees") could enable them to acquire more expensive programming. While this would have a positive effect on the competitive position of broadcasting, it alone is unlikely to counterbalance the inroads on broadcast audiences being made by cable networks and increased expenditures on cable programming.

VII. DIRECT-TO-HOME SATELLITE TRANSMISSIONS

Satellite-to-home service is a potentially significant multichannel video service that could increase competition to terrestrial television by offering large numbers of channels of programming directly from a satellite to a home receiving dish without an intervening cable system or terrestrial broadcast station. Direct-to-home satellite transmissions are a significant force today in areas not passed by cable and are likely to become more important in those areas.

In addition to serving uncabled areas, satellite services potentially could aggregate minority-taste audiences on a nationwide basis, thus offering programming that could not be supported otherwise and providing highly-targeted advertising opportunities. Moreover, the ability to aggregate small audiences from many different areas, coupled with the expense of HDTV transmission equipment, makes it likely that HDTV programming will be available via satellite before it is available terrestrially. On the other hand, unlike cable systems, satellites probably could not offer local broadcast channels.[106] Direct broadcast satellite systems, using high-powered signals that would permit use of small, inexpensive receiving equipment, may be able to challenge cable television directly in the future, but the success of home satellite in cabled areas is by no means assured.

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106 Satellites are now used to deliver regional channels, mostly sports, but the potential is there for more, e.g., statewide news channels. The expanded channel capacity that signal compression may bring, plus spot beam technology, could eventually permit services targeted to narrower geographic areas.

In 1990, between 2.7 and 3 million home satellite dish systems were in use in the United States.[107] This represents roughly three percent of television households. A recent survey shows that 42.2 percent of dish owners are also passed by cable, and 11.3 percent of dish owners actually subscribe to cable.[108] This implies that approximately 20 percent of homes not passed by cable have home satellite dish systems.

The proliferation of home satellite dish systems depends on the following factors: (1) the cost of the reception equipment; (2) the availability of cable service; (3) the size of the dish antenna needed; (4) the availability and price of programming; and (5) the timing of the adoption of certain innovations, in particular digital signal compression. This chapter begins by surveying current and proposed satellite services. After that is an analysis of the prospects of those services in light of the above factors and a brief conclusion.

CURRENT AND PROPOSED SATELLITE SERVICES

Satellite services can be divided into three categories: C-band, medium power Ku-band, and high power Ku-band.[109] The categories differ significantly with respect to satellite spacing and permissible transponder power, which together influence receiving antenna size, and with respect to program supply. The high power Ku-band has been allocated by international agreement to the "broadcast satellite service." It is known in the United States as DBS, "true DBS," or high power DBS. Of the three categories, this is the only one originally intended for transmissions directly to the general public. The other two categories are in the "fixed satellite service," and were intended primarily for point-to-point or point-to-multipoint transmissions directed at cable system headends, terrestrial broadcast stations, or other local distributors, which would then retransmit the material to individual households. However, there are operating and planned services in both of these categories that provide programming directly to home satellite dish (HSD) owners.

The C-Band

Today virtually all home satellite dish systems are C-band systems, although a significant minority have Ku-band capability as well. Current C-band antennas are usually ten feet or so in diameter, making them

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107 The lower estimate is from Satellite Business News, November 14, 1990, p. 1; the higher is from Paul Kagan Associates, Marketing New Media, September 17, 1990, p. 7.

108 Satellite TV Week survey, reported in SatVision (the magazine of the Satellite Broadcasting and Communications Association) October 1990, p. 7.

109 This section draws on Reinhart for background information on these three categories of system.

impractical in many congested urban areas. In addition to the issue of sheer availability of space, considerations of safety, esthetics, and municipal regulations (i.e., zoning rules) also affect the decision to install a home satellite system. One source estimates that a complete C-band HSD system costs between $2000 and $4000.[110]

Cable programmers use the C-band for delivering programming to cable system headends, and employ the Videocipher II (VC II) technology to encrypt it.[111] Prices, particularly for annual subscriptions, are comparable to or below cable subscriber rates.[112] There are roughly 710,000 legally authorized subscribers to C-band services and at least that many additional signal "pirates" (i.e., households with decoders altered to permit theft of scrambled satellite services).[113] Recently the major cable programmers signed long term leases for transponders on the new generation of C band satellites. Thus, for at least the next ten years, cable networks will almost certainly use C-band transmissions for program distribution, so the home dish market be able to "piggyback" on this programming source during that period.

Medium Power Ku-Band Systems

One medium power Ku-band system is operating and a second one is scheduled to launch soon. PrimeStar is currently offering a package of superstations and pay-per-view services in this band. SkyPix plans to begin its service in the summer of 1991, offering 80 channels of programming by utilizing an eight-to-one signal compression ratio.[114] Most of this capacity

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110 Reinhart, p. 417.

111 See FCC Encryption Standards Report.

112 See Satellite Orbit (May 1991), pp/ B3, B7-B9; FCC Cable Report, para. 20 and appendix F, tables 1B and 9; Satellite Broadcasting and Communications Association, SBCA Home Satellite Subscription Information, (May 1990); Second Report in Gen. Docket No. 86-336, 3 FCC Rcd 1202 (1988), paras. 38-50.

113 The General Instrument Corporation (GIC) is the patent holder and primary manufacturer of Videocipher II equipment. GIC figures for April 30, 1991 show 459,000 legally authorized Videocipher II and 251,000 legally authorized Videocipher II Plus decoders. Chapter V contains a brief discussion of signal theft issues.

114 The information in these paragraphs on Primestar is drawn from Satellite Business News, April 3, 1991, p. 4; Nov. 28, 1990, pp. 7, 14; Nov. 14, 1990, pp. 1, 22; Electronic Media, Nov. 5, 1990, p. 12; and Satellite Communications, April 1990, p. 6.

The description of SkyPix is drawn from Satellite Business News, May 1, 1991, pp. 1, 22-23; March 20, 1991, pp. 1, 22; and Oct. 3, 1990, pp. 1, 21.

will be used to offer popular current movies, each one transmitted several times per evening with staggered starting times, perhaps every half hour. This scheduling provides a service close to video on demand that may be seen as a substitute for cassette rental. Some industry observers believe that, in order to prosper, SkyPix will have to gain access to additional programming, such as popular basic cable channels.

SkyPix plans to sell its reception equipment for $699, while PrimeStar equipment costs $595 installed. Both services claim that an antenna rougly three feet in diameter is needed for reception, both expect to break even with 300,000 subscribers, and both plan to move from their leased space on medium power satellites to high power Ku-band satellites (DBS) when such satellites become available later in the 1990's.

High Power DBS

True DBS (i.e., high-powered Ku-band satellite service) is on the horizon. Eight DBS permits have been issued and one application is still being evaluated.[115] The permittees have made varying degrees of progress toward constructing their satellites. None have yet launched, but some launches are currently scheduled for 1994.[116] DBS home reception equipment will likely include a dish antenna 18 inches in diameter. Eventually, antennas may be as small as 12 inches in diameter. Estimates of the initial cost of the systems range from $500 to $700, with one source predicting that equipment costs will fall "rapidly" to from $700 to $300 or less.[117]

ANALYSIS

The growth of the home dish market is difficult to predict. Notwithstanding the relatively high fraction of current dish owners passed by cable, because of the high cost of receiving equipment, the most promising area for expansion in the near term appears to be homes not passed by cable. As table 15 indicates, there are now eight million such homes; in 1999 there will probably be seven million.

Reception Equipment Cost and Availability of Cable Service

In a recent study on cable-DBS competition, Johnson and Castleman conclude that DBS could be competitive with cable in many parts of the country with equipment costs in the $300 to $500 range and that it could be viable in

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115 RAND DBS Report, p. 8.

116 See Satellite Business News, May 15, 1991, pp. 1, 21; June 12, 1991 pp. 1, 22, 23.

117 For information on proposed DBS services, see Broadcasting, April 8, 1991, p. 66 and Feb. 18, 1991, pp. 29-30; Satellite Business News, July 11, 1990, p. 37; and Communications Daily, April 19, 1991, p. 4.

uncabled areas with even higher equipment costs.[118] Equipment cost estimates for the various medium and high power DBS services range from $500-$700, with one prediction that the price will drop to $300. Thus, if Johnson and Castleman are correct, DBS is unlikely to be a major factor in cabled areas, at least initially. The presence today of an estimated 1.2 million C-band home satellite systems in cabled areas suggests that the Johnson-Castleman criteria cannot be mechanically applied. It is clear, however, that the competitive conditions facing DBS are different in cabled and uncabled areas. Satellite service is likely to grow first in uncabled areas and then, possibly, expand to compete directly with cable.

One key component of satellite reception equipment is the decoder. Should DBS services develop with incompatible encryption systems, subscribers could be faced with the need to purchase more than one decoder, or a multistandard decoder. This would add to their equipment cost and could limit the number of households choosing to access satellite services.[119]

Dish Antenna Size

Many segments of the satellite industry have placed a high priority on reducing the size of the home dish, believing that the size of the potential market is inversely related to the size of the dish. Currently, the relatively large size of the dish antenna--10 feet in diameter for C-band--presents problems with respect to esthetics, zoning, and even safety (particularly in cases where the antenna needs to be mounted on the roof of a dwelling).

Medium power Ku-band and DBS services will employ dishes one to three feet in diameter, while advances in receiver technology might support the use of four-foot antennas in C-band, if the spacing of satellites is not reduced

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118 See RAND DBS Report, pp. 15-38.

119 Cable subscribers would not be affected significantly by such a situation. The cable operator would presumably provide them with a standard converter box. Since cable operators need to be able to provide all channels on their systems simultaneously, they need a separate receiver and decoder for each channel anyway. If those decoders do not all embody the same encryption system, their costs are hardly affected. See chapter V above for a more detailed description of this issue.

as planned to two degrees.[120] As the size of the antenna declines, more households will likely find HSD systems attractive. It is not clear, however, whether a drop in dish size from ten to four feet or so would spark a substantial increase in the demand for HSD systems. While the industry appears to believe that a drop in size to 18 inches or under would cause a substantial increase in demand, this belief is not based on actual market experience.

With or without a decline in dish size, relaxation of local zoning regulations could result in additional penetration of satellite equipment.[121] In 1986, the Commission preempted certain state and local zoning regulations that discriminate against HSD antennas.[122] The Commission has before it two petitions that, in essence, request more vigorous enforcement of the Commission's preemption order.[123] Such enforcement might have a significant

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120 C-band satellite operators are currently in the process of implementing a Commission decision, made in 1983, to reduce the spacing between satellites from three degrees to two degrees. That is, new C-band satellites are launched into orbital slots spaced two degrees apart. Elements of the HSD industry, principally makers of home reception equipment, have petitioned the Commission to retain three degree spacing, at least for the satellites used for video distribution. They believe that this would permit good reception by HSD systems with four to five foot antennas. See Petition for Rulemaking In the Matter of Amendment of C-Band Satellite Orbital Spacing Policies to Promote the Development of Video Distribution to the Home, filed Jan. 25, 1991, RM-7628, esp. pp. 11, 21-22, and Reply Comments of General Instrument Corporation in RM-7628, filed April 19, 1991, pp. 17-18 and Attachment A. There is some disagreement on the engineering analysis of the minimum antenna size needed for adequate reception with three degree spacing.

121 The FCC Cable Report notes that the use of HSD antennas is restricted by zoning regulations (para. 103), records the impressions of some commenters that there was "uncertainty at the local level" regarding the Commission's preemption of regulations (para. 135), and recommends that Congress act to prohibit "local governments from regulating installation of reception equipment beyond those provisions reasonably related to a clearly defined health, safety or reasonable aesthetic objective" (para. 142).

122 Report and Order in CC Docket No. 85-87, 57 Fed Reg 5519 (Feb. 14, 1986), esp. paras. 1, 40.

123 Petition of Joseph Carino for Declaratory Ruling, DA 91-145, filed Jan. 21, 1991, and Petition for Declaratory Ruling Clarifying the FCC's Preemption of Local Zoning Ordinances That Discriminate Against Home Satellite Earth Stations, And Instituting Procedural Reforms, Satellite Broadcasting and Communications Association, filed April 16, 1991.

impact on HSD system sales, and thus might indirectly influence the competitiveness of HSDs with cable, broadcasting, and other video delivery media.

Programming Availability and the Adoption of Certain Innovations

Because of the demonstrated popularity of cable services, it appears that, in order to be competitive, satellite services need to offer cable networks (or close substitutes for them) or new services that are highly valued. Access to cable programming seems assured only for the C-band service. The programming is already being encrypted and delivered to cable headends via C-band so the marginal cost of delivering it to dish owners is quite low (the conditional access and billing system are the primary added expenses).

While DBS cannot deliver local broadcast signals, satellites can deliver the nationally-distributed programming that comprises a large share of local television stations' broadcasts. Currently, distant broadcast stations, both independents and, in some areas, network affiliates, are available via satellite, as are regional services. If the major broadcast networks offered programming directly to viewers (e.g., directly to the home via satellite, or directly to the home via cable) without broadcast stations as intermediaries, DBS's lack of local broadcast signals would become less of a disability.

Services that DBS might be able to offer that are not available on cable, or that might become available on satellite before cable can offer them, include near video on demand and very narrowly targeted programming. With respect to near video on demand, satellite services may have a head start on cable by virtue of their possible earlier implementation of video compression technology. Should these services prove highly valued by consumers, DBS might overcome any comparative disadvantages due to high equipment costs or restricted access to conventional cable programming.[124]

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124 While compressed video services probably will be available in 1991 via satellite, industry sources estimate that compression will not be introduced on cable until 1994. See Cable World, April 1, 1991, p. 44; Communications Daily, March 28, 1991, pp. 2-3. Satellites may have an advantage in the aggregation of narrow preferences because a single orbital slot can serve the entire contiguous United States, while cable faces a significant marginal cost for each additional home passed. By one estimate, the per-channel cost of reaching all television households is $3.7 million via satellite and $378 million via cable. (Calculations based on data in RAND DBS Report, p. 17 and RAND Broadband Services Report, p. 86.) At least one DBS entrepreneur asserts that cable operators will not find it economical to devote channel capacity to services with very narrow appeal. See Broadcasting, April 8, 1991, p. 66.

SUMMARY

Direct-to-home satellite distribution systems, including DBS, are likely to expand, particularly in the non-cabled areas, and particularly if the satellite services gain access to programming at reasonable rates. The effect on the broadcast audience of expanded DBS use in uncabled areas is unclear. Many of the areas not now cabled have very sparse broadast service, so there may be very little audience to erode. On the other hand, while DBS cannot bring local broadcast service to these areas, it can provide superstations and network stations pursuant to the satellite carrier compulsory license (17 U.S.C. 119).

In cabled areas, DBS equipment cost projections and uncertainty regarding access to cable programming suggest that, at least initially, DBS will not be a strong head-to-head competitor delivering conventional cable programming. However, if DBS were to offer popular new services at moderate prices, it could make inroads into both broadcast and cable audiences.[125] The leading possible categories appear to be near-video-on-demand and niche programming. The key unresolved question is what new services will have a significant impact on viewing.

Should significant DBS competition to cable develop, cable systems would likely respond by reducing prices and improving service, thus making cable more attractive relative to over-the-air viewing. DBS competition therefore could cause broadcast viewing shares to fall faster than current projections indicate.

VIII. OTHER VIDEO MEDIA

Videocassette recorders and wireless cable systems provide additional sources of video programming. While unlikely to have the massive effect of cable and, conceivably, satellite service, these media clearly expand viewers' options and affect the broadcast television market. The cumulative effect of several additional alternatives may be considerable. We describe these media briefly below.

VIDEOCASSETTE RECORDERS

VCRs expand the choices available to television households by providing pre-recorded material as well as recording and playing material received over the air. VCRs allow viewers to see material in the home that commercial broadcast TV stations could not offer because it would

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125 These services could also increase total viewing, but, given the current level, it seems unlikely that the increase would be great. Thus, the primary effect of these new services would be to divert audiences from existing services.

not be attractive to advertisers or is inappropriate for broadcast, and even of material too specialized to be offered by cable. They also allow viewers to control the time at which they view over-the-air programs. Because VCRs both provide additional options and increase the convenience of over-the-air viewing, in theory they might either increase or decrease the amount of time spent viewing over-the-air material. Some broadcasters also fear that the ability to fast-forward through commercials may reduce the effectiveness of commercial messages.

Videocassette recorders were introduced in the early 1970's and by 1990 were used by over two-thirds of television households, as shown in table 20. By early 1991, 76.6 percent of television households had VCRs.[126] The Television Bureau of Advertising predicts that penetration will exceed 90 percent by the end of the decade.

TABLE 20
VCR PENETRATION

Year	VCR Households (1000's)	% of TV Households
1975	--	--
1980	840	1.1
1985	17,660	20.8
1990	63,180	68.6
1995*	82,270	84.3
1999*	93,500	91.7

SOURCE: Television Bureau of Advertising, Inc., "Trends in VCR Usage," April 1990, pp. 3, 5.

NOTE: 1975-1990, VCR's, February of each year; households, January of year; 1995-1999, beginning of year.

*Projected.

Table 21 shows that television households with VCRs use their television sets to view nonrecorded material directly or to record it slightly more hours than other households use their television sets.[127] This result would suggest that what little effect VCRs have on time spent watching nonrecorded television programming is positive. Since VCR households probably value

126 "VCR penetration climbs to 76.6%," Variety, May 31, 1991, p. 45.

127 The differences are small and are unlikely to be statistically significant.

TABLE 21
TELEVISION USAGE OF NON-VCR AND VCR HOUSEHOLDS
(Average Hours Per Day)

Year	Non-VCR Households	VCR Households*		
		Total	Regular Usage	Record with Set Off
1987	6.9	7.1	6.9	0.2
1988	7.0	7.0	6.8	0.2
1989	7.0	7.1	6.9	0.2

SOURCE: Television Bureau of Advertising, Inc., "Trends in VCR Usage," April 1990, p. 6.
NOTE: Data prior to September 1987 based on NTI Audimeter Sample; from September 1987 on, based on NTI People Meter Sample.
*Includes VCR recording with set off but does not include any playback activity.

television programming more highly than others, however, it is possible that they would have viewed much more broadcast programming than non-VCR households in the absence of a VCR and the option of viewing prerecorded programming. If so, VCRs have a negative effect on viewing that does not appear in the data.

Time spent using a VCR is shown in table 22. The average time spent both recording and playing has declined since 1986, but the difference between the two, the time apparently spent watching prerecorded material, has increased.[128] Compared with the total time spent with television, however, the numbers remain small: time spent playing a VCR was only 8.0

TABLE 22
TIME SPENT RECORDING AND PLAYING VCRS
(Average Hours Per Week)

Year	Record	Play	Difference
1986	2.9	4.6	1.7
1987	2.6	4.3	1.7
1988	2.4	4.4	2.0
1989	2.1	3.9	1.8

SOURCE: Television Bureau of Advertising, Inc., "Trends in VCR Usage," April 1990, p. 7.

128 This interval, 1.8 hours, is consistent with the viewing of one prerecorded movie per week. This estimate may understate the time spent watching prerecorded material because households may record over-the-air material but never play it back.

percent as great as time spent directly watching broadcast or cable television, and time apparently spent watching prerecorded programming was 3.7 percent as great. So even if the number of households with VCRs increases as projected, the effect on aggregate viewing of broadcast television will be modest, probably not more than an additional 1 percent. Prerecorded videocassettes appear to be a closer substitute for pay cable than for broadcast programming, and the fact that pay cable's share of viewing has not increased since the 1982/83 season suggests that VCRs have primarily affected pay cable viewing rather than advertiser-supported cable or broadcast viewing.

Expenditures on video programming, however, are large. Consumer spending on rental and purchase of videocassettes in 1989 was reported to be $9.6 billion, which is two-thirds of the amount spent on cable subscriptions and almost twice the amount of theater box office revenues.[129] This works out to $2.92 per VCR household per week, or roughly the cost of the rental of one videocassette per week. Videocassette expenditures are projected to increase to $16.5 billion by 1995.[130] The expenditures on videocassettes make clear that viewers are willing to spend large amounts for small quantities of highly-valued programming.

WIRELESS CABLE

An alternative multichannel distribution medium is provided by the Multichannel Multipoint Distribution Service (MMDS), commonly called wireless cable. These systems use microwave frequencies to transmit up to 32 channels of programming that can be received by conventional television sets with the aid of a converter. Wireless cable has developed as a pay service that is a closer substitute for cable than for over-the-air broadcasting. In fact, wireless cable systems are considered to provide more promising competition for existing cable systems than do competing second cable systems ("overbuilds") because they can serve small numbers of customers with a relatively small capital investment.[131]

Wireless cable systems use frequencies originally allocated to the Instructional Television Fixed Service (ITFS) and the Private Operational Fixed Service (OFS) in addition to the MMDS channels. Wireless cable providers may lease excess capacity on ITFS channels from the licensees, which are schools and other educational institutions. Aggregating enough channels for a commercially viable service, however, is often difficult. In

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129 See table 2.

130 NBC, citing Paul Kagan Associates, Motion Picture Investor, Dec. 28, 1989.

131 Cable systems must pass large numbers of homes with cable whether they subscribe or not, while wireless cable systems need only provide a headend and receiving equipment for actual subscribers.

addition, the maximum number of channels is much smaller than that provided by the majority of cable systems. Expansion of wireless cable systems has been hindered by lack of access to programming, allegedly because programming has been withheld by cable programmers.[132]

Wireless cable systems' penetration has been modest to date, but has grown rapidly, more than doubling since 1988. Current subscribership is about 180,000, or about 0.2 percent of television households, and current revenues are $54.4 million.[133] At least for the next several years, wireless cable systems are expected to succeed in niche markets rather than as major competitors to cable.[134] To the extent that they offer competition to cable systems, however, they will constrain cable systems to offer better service at lower prices. The effect on over-the-air broadcasting will be to reduce audiences somewhat because of greater subscribership to multichannel media.

IX. THE ADVERTISING MARKET

Sale of advertising time and payments from advertiser-supported networks comprise, for practical purposes, the sole sources of revenue for broadcast stations. Consequently the state of the overall advertising market, and competition from other advertising media, crucially affect the health of broadcast television. Here we examine the overall market for advertising and the sub-markets in which broadcast networks, television stations, and cable systems operate, and briefly consider non-video advertising options.

TOTAL ADVERTISING AND VIDEO ADVERTISING

Television advertising is one component of a larger advertising market. Total advertising grew rapidly as a percentage of GNP until the mid-1980's (table 23).[135] Recently the pie has ceased to expand: advertising volume has grown at roughly the same rate as GNP since 1985, and is expected to

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132 For an extensive discussion of program availability to wireless cable systems, see FCC Cable Report, paras. 100, 114.

133 Channels, December 3, 1990, p. 59, citing Paul Kagan Associates, Inc.

134 Ibid.

135 Forecasts of advertising expenditures are most commonly based on projections of GNP growth with some ad hoc corrections for events such as Olympic and election years and subjective adjustments for structural changes in the economy. "Advertising Revenue's Great Expectations," Broadcasting, April 15, 1991, p. 82. Consequently such predictions are subject to considerable error and should not be given excessive weight. More important for our analysis than precise predictions are the direction of trends and the relative positions of competing media.

TABLE 23
VIDEO ADVERTISING AND GNP

	Ad Volume ($ Billion)	Video Ad Volume ($ Billion)*	Ad Volume/GNP (%)	Video Ad Volume/ Ad Volume (%)	Video Ad Volume/ GNP (%)
1975	27.9	5.3	1.75	18.9	0.33
1980	53.6	11.5	1.96	21.4	0.42
1985	94.8	21.0	2.36	22.2	0.52
1990**	130.5	28.9	2.38	22.1	0.52
1995**	182.7	40.2	2.38	22.0	0.53

SOURCE: 1975-1985, McCann-Erickson, Inc., "Estimated Annual U.S. Advertising Expenditures," prepared for Advertising Age, April 1991; 1990-1995, Television Bureau of Advertising, "Trends in GNP, Ad Volume, and TV Ad Volume 1960-1995," August 1990.

*Includes national syndication and cable. **Projected.

continue to do so. Video advertising (including broadcast and cable television) grew as a proportion of total advertising through 1984, then declined slightly. Industry projections indicate that advertising, and the video component of advertising, are expected to grow at about the same rate as GNP through 1995. Thus the rapid historical growth of television advertising is believed to have come to an end.

The growth of total advertising expenditures, according to Veronis, Suhler and Associates, has been slowed by corporate restructuring--changes in corporate ownership, leveraged buyouts, and the like--which has retarded the growth of advertising expenditures, in particular shifting advertisers' focus from long-term advertising designed to build product images to short-term promotions. Veronis, Suhler predict a rebound after 1992.[136] Others predict a continuation of a twenty-year trend away from media advertising to direct-response advertising and special promotions.[137] Whatever the case in the long term, video advertising expenditures are also in a short-term slump due to the current recession.

The video advertising market consists broadly of two sub-markets, the national market and the local market. The national market involves sales of advertising time by networks, syndicators, and broadcast stations to national advertisers. Broadcast networks sell time they receive from their affiliates in return for programming and payments called "compensation." Syndicators also sell time received from stations, usually through barter for programming. Local stations, both affiliates and independents, sell time in the "national spot" market. Basic cable networks, some national and some regional, sell

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136 Communications Industry Forecast, p. 24.

137 Jib Fowles, "The Upheavals in the Media," New York Times, January 6, 1991, p. 13.

advertising time in the national market and also charge cable systems for programming on a per-subscriber basis.

Broadcast stations also sell time to local advertisers. Local cable systems currently do little program origination (with notable exceptions such as local news channels), though they sell some advertising time on national cable networks to local advertisers.

According to McCann-Erickson, Inc., broadcast network advertising makes up about a third of total video advertising.[138] Cable accounts for only about 6 percent (table 24).[139] At least since 1980, the network share has dropped continuously and substantially. Since 1980 the cable network and national syndication shares have each risen from close to zero to roughly 5 and 6 percent of the market, respectively.[140] National spot and local advertising have been more stable, with the share of the former falling slightly and the latter rising slightly. While the components of video advertising are all predicted to grow, the rates of increase are expected to vary greatly, with the cable and national syndication categories gaining in share at the expense of the others.

Television advertising revenues are a function, broadly speaking, of the size of the audience watching the medium or the program in question. While the demographic composition of the audience also affects advertising sales, advertisers apparently purchase time on the basis of a small number of demographic criteria, sometimes collapsing the decision to the size of the audience in a single target demographic group.[141] The decline over time in broadcast networks' advertising share and the increase in the shares of cable and national syndication, shown in table 24, are roughly consistent with the movement of audiences away from network television and toward cable and independent stations.

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138 McCann-Eriskson is viewed as the most authoritative source of data on advertising revenue, and is the basis for standard statistical sources such as the Statistical Abstract of the United States. The McCann-Erickson time series goes back to 1935.

139 Paul Kagan Associates' estimate of cable advertising revenue is about 40 percent higher than the McCann-Erickson estimate. Paul Kagan Associates, Inc., The Kagan Cable TV Financial Databook, June 1990, p. 70.

140 The national syndication category has grown rapidly, largely because it includes Fox Network advertising revenue.

141 As discussed below, fragmentation of both video and print media have recently been accompanied by more targeted advertising, which places advertisements in media that attract groups of viewers or readers likely to have an interest in the product.

TABLE 24
COMPONENTS OF VIDEO ADVERTISING

	1975	1980	1985	1990*
Video Ad Volume ($ Million)				
Total	5,263	11,469	21,022	28,405
National	3,929	8,494	15,178	20,153
Broadcast Network	2,306	5,130	8,060	9,383
National Spot	1,623	3,269	6,004	7,788
National Syndication	--	50	520	1,589
Cable Network	--	45	594	1,393
Local	1,334	2,975	5,844	8,252
Local Spot	1,334	2,967	5,714	7,856
Cable (Non-network)	--	8	130	396
Percent of Total				
National	74.7	74.1	72.2	70.9
Broadcast Network	43.8	44.7	38.3	33.0
National Spot	30.8	28.5	28.6	27.4
National Syndication	--	0.4	2.5	5.6
Cable Network	--	0.4	2.8	4.9
Local	25.3	25.9	27.8	29.1
Local Spot	25.3	25.9	27.2	27.7
Cable (Non-network)	--	0.1	0.6	1.4

SOURCE: McCann-Erickson, Inc., "Estimated Annual U.S. Advertising Expenditures," prepared for Advertising Age, April 1991.

*Preliminary.

As viewing shifts from broadcast television to other media, audiences for television advertising will decline. If viewers move to non-advertiser-supported media, such as prerecorded tapes or pay cable, total video advertising audiences will decline, and broadcast stations and networks may be able to raise prices per viewer in consequence of the reduced supply (assuming the remaining audiences are qualitatively similar to those in the past). On the other hand, if viewers move to basic cable, advertising audiences will remain undiminished (to the extent that cable advertising is a substitute for broadcast advertising), but broadcasters' share will fall. Thus the consequences for broadcasters of basic cable viewing are potentially more serious than those of pay cable viewing. It should be noted that basic cable has a much larger share of viewing than pay cable, and its share has been growing rapidly.

NETWORK ADVERTISING

Historically, broadcast network advertising was considered far superior to any alternative for advertising many products. The advantage of network advertising is greatest for types of advertising, particularly those introducing new consumer products, where near-universal coverage is considered essential. Networking reduces transactions costs by permitting the purchase of advertising that will reach large audiences in a single transaction. While it is possible to reach an equivalent national audience through a combination of national spot and cable network advertising, buying broadcast network time is much easier for advertising agency time buyers. Whereas broadcast network advertising can in principle reach essentially the entire population, cable advertising at best misses about 40 percent of the households in the country because they do not subscribe to cable. While basic cable channels as a group recently achieved an audience share equivalent to that of a single network, individual cable channels have only small shares of viewing.[142]

In addition, audience measurement techniques for cable are not well developed, so that advertisers cannot be sure how large an audience they are reaching. Network advertising has a lower cost per viewer than national spot advertising.[143] Advertising agents claim that it has a higher perceived quality and status than the alternatives. Thus, despite the audience erosion of recent years, many advertising agents continue to believe that network advertising has no good substitutes.[144] This perception, however, appears to be changing.

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142 "Growth of basic-cable's steady," Variety, September 17, 1990, p. 34.

143 Television Bureau of Advertising, "Trends in Media," August 1990, pp. 3-7.

144 Based on conversations with executives of advertising agencies.

If all viewer exposures are considered equivalent, other media can substitute for network television. Then declining network audiences will result in at least proportionate declines in network revenue. To the extent, however, that advertisers do not view other media as equivalent to the broadcast networks, whether because of higher transactions costs to reach an equivalent audience, poor audience measurement, or for some other reason, the decline in network audiences will reduce the supply of network-quality advertising exposures and may allow the networks to raise their prices per viewer. The decline in network audience size, however, will reduce the transactions cost advantage of buying network advertising, as will increased audience size for the popular cable networks. This effect may counterbalance the networks' ability to raise prices in response to the decreased supply of exposures. The collapse in 1991 of the so-called upfront network advertising market, in which advertisers buy time in advance for the coming season, may indicate that the networks no longer are able to increase the price per viewer, thus indicating a shift in advertiser thinking.[145]

Table 25 shows the rate of growth of revenues for various categories of video advertising, adjusted for inflation. Total video advertising appears in the first column. Trends in advertising revenues must be interpreted with caution because video advertising fluctuates with the business cycle and tends to increase in Olympic years election years. Nevertheless, table 25 shows that total inflation-adjusted video advertising grew rapidly over the early 1980's but much more slowly later in the decade, and fell slightly from 1988 on.

Network advertising revenues reached a peak in real terms in 1984 and have declined since. (See figure 9). Real network advertising revenues increased 28.6 percent between 1980 and 1984 Sut decreased 3.2 percent between 1984 and 1988, and continued to fall through 1990.[146] Since 1979, network advertising has fallen steadily relative to GNP, except in 1982-84. The networks' share of national television advertising has fallen from 59 percent in 1975 to 47 percent in 1990.

During the fifteen years between 1975 and 1990, network viewing declined steadily and by a much larger proportion than advertising revenues. Network prime-time ratings fell 12.0 percent (not points) between 1980 and 1984 and 13.6 percent between 1984 and 1988. Households reached in prime time fell 6.5

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145 "Neck and Neck at the Networks," Business Week, May 20, 1991, p. 36; "Nervous Nets Wheel Early Deals," Variety, May 20, 1991, p. 21.

146 These years were chosen for comparison because network advertising revenues are believed to peak in years of the Olympics and the Presidential election campaigns. Based on data from McCann-Erickson, Inc., "Estimated Annual U.S. Advertising Expenditures," April 1990, and Cabletelevision Advertising Bureau, Cable TV Facts, 1989, pp. 12-13.

TABLE 25
INFLATION-ADJUSTED VIDEO ADVERTISING REVENUES, 1975-1990
(1982-84 Dollars)

	Total	Network ($ Million)	National Syndication* ($ Million)	Television Station** ($ Million)	Cable*** ($ Million)	% Change in Real GNP
1975	9,783	4,286	--	5,496	--	
1976	11,812	5,021	--	6,791	--	4.9
1977	12,561	5,710	--	6,852	--	4.7
1978	13,735	6,097	--	7,638	--	5.3
1979	13,986	6,335	--	7,652	--	2.5
1980	13,919	6,226	61	7,568	64	-0.2
1981	14,132	6,095	83	7,826	129	1.9
1982	15,167	6,367	155	8,424	221	-2.5
1983	16,826	6,983	301	9,209	333	3.6
1984	19,103	8,006	404	10,175	518	6.8
1985	19,537	7,491	483	10,890	673	3.4
1986	20,877	7,611	547	11,938	781	2.7
1987	21,042	7,482	671	12,041	848	3.4
1988	21,713	7,753	762	12,187	1,011	4.5
1989	21,686	7,347	1,039	12,069	1,231	2.5
1990****	21,677	7,179	1,216	11,969	1,369	0.9

SOURCE: McCann-Erickson, Inc., "Estimated Annual U.S. Advertising Expenditures," prepared for Advertising Age, April 1991; consumer price index, Economic Report of the President, transmitted to the Congress February 1991, U.S. Government Printing Office, (Washington: 1991), p. 351.

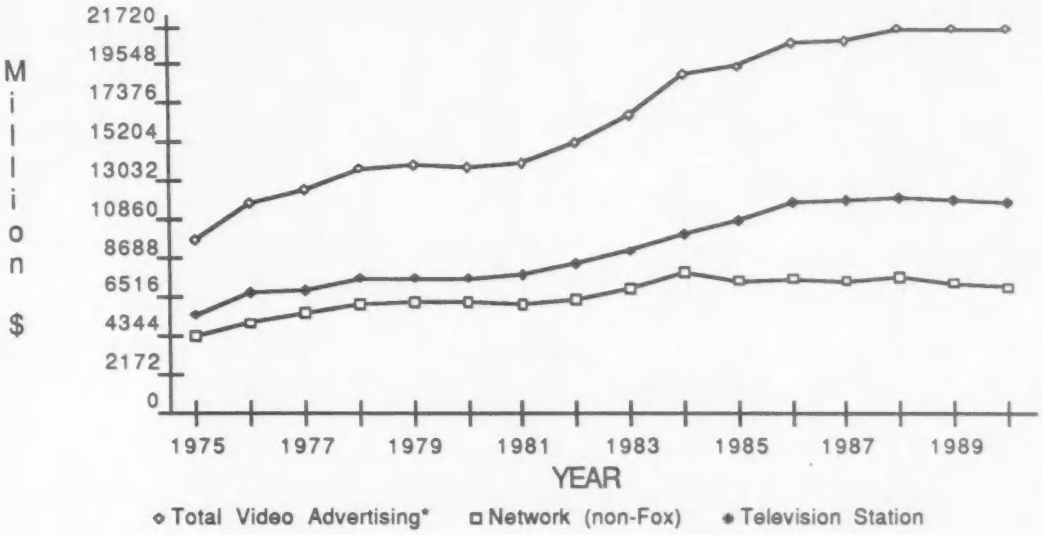
*Includes Fox network advertising, 1988-90.

**Includes national and local spot advertising.

***Includes network and non-network cable advertising.

****Preliminary.

FIGURE 9
TOTAL VIDEO AND NETWORK ADVERTISING REVENUE
(1982-84 Dollars) (millions)



*Total includes network, television station, national syndication and cable advertising.

percent and 9.6 percent in the two periods, respectively.[147] Clearly changes in advertising revenues have trailed declines in network audiences.

The networks may retain an ability to attract mass audiences for special events, such as the Super Bowl, and smaller but still relatively large audiences in prime time, but for much of their schedule, the networks' audiences are in the range of those of some of their competitors in prime time. The daytime three-network rating (percentage of all television households) averaged 4.8 each, and the late-night three-network rating averaged 3.7 each, in the 1989-90 season.[148] In 1990 the Fox network had a prime-time average rating of 6.2, while the ratings of the three major networks ranged between 11.0 and 12.3. Thus Fox's prime-time rating was more than half of any of the big three networks' prime-time ratings and considerably larger than their ratings in other time periods. In 1990, four

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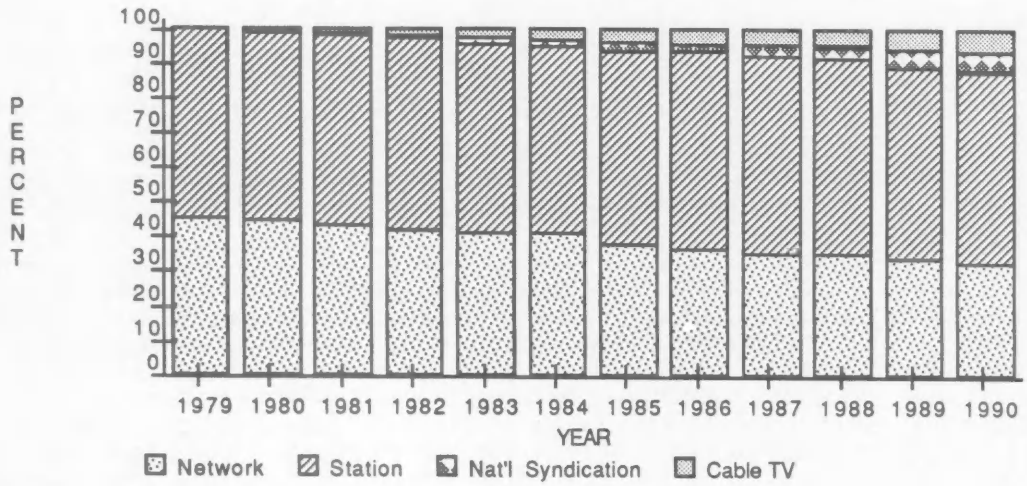
147 Communications Industry Forecast, p. 45. See also chapter III, table 7.

148 M-F daytime and M-F late night, September-April, 1989-90. CBS, citing Nielsen Television Index.

basic cable channels had prime-time ratings of 1.0 or better.[149] By the first quarter of 1991, three basic cable networks had prime-time ratings of 2.0 or better, and six more had ratings of 1.0 or better.[150] Of course the demographic characteristics of audiences in other time periods may be different from those in prime time, so the ratings are not exactly comparable. But while still lower than the three networks' in most cases, the ratings of other media clearly offer plausible alternatives for advertisers.

Closer substitutes for the networks are clearly appearing. (See figure 10.) The Fox network now reaches 91 percent of households in the country, and through deals with cable operators where it is unavailable over

FIGURE 10
SHARE OF TELEVISION ADVERTISING REVENUE



149 Household prime-time averages, January 1-November 2, 1990, Los Angeles Times, November 11, 1990, Calendar, p. 7, citing Nielsen Television Index and network estimates.

150 Multichannel News, May 6, 1991, p.19, citing Nielsen Media Research. See table 17.

the air hopes to reach another 5 percent.[151] Fox programs only five evenings a week, but is attempting to expand its schedule. Independent station revenues jumped in 1989, apparently as a result of Fox's success.[152]

For statistical purposes, advertising revenues of the Fox network and national syndicators are combined. This revenue category, adjusted for inflation, is shown in the third column of table 25. While not a clear measure of Fox revenues, this category does provide a measure of competition to the major networks from national suppliers of advertising time.[153] Revenue from these sources was about 16 percent of three-network advertising revenues in 1990, or close to half of the major-network average. National syndication is expected to continue to grow rapidly.[154]

In other media, interconnects among local cable systems are developing to reduce transaction costs for advertising purchases, and nationwide mechanisms may also develop. In the future, DBS or some combination of DBS and cable probably will provide nationwide service. These developments will increase the supply of advertising time and reduce the transactions cost of purchasing national (or at least very broad) coverage, and may further erode network revenues.[155]

Industry predictions show the network share of television advertising revenues, which fell from 44.7 percent in 1980 to 33.8 percent in 1990, continuing to fall. The Television Bureau of Advertising predicts a network share of video advertising of 31.9 in 1995; Veronis, Suhler and Associates predicts a share of 32.4 percent in 1994.[156] The Television Bureau of

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151 "Tele-Communications Deal Extends Fox's Cable Reach," New York Times, September 7, 1990, p. D-6; "With Cable as Partner, Fox Dances in the Ratings," New York Times, September 10, 1990, p. D-9.

152 It is not clear whether enough independent stations remain to make yet another broadcast network viable. Fox now has 134 affiliates; 94 markets have a second independent, and 58 have a third. Arbitron, Television Market Guide, 1989-1990.

153 Fox network revenues in fact are expected to be about $500 million in the most recent fiscal year, which amounts to about a third of the total "National Syndication" category. Kathryn Harris, "Making money on rotten ratings," Forbes, May 27, 1991, p. 42.

154 Communications Industry Forecast, p. 94.

155 The increased supply of advertising time is believed to be a cause of lower network advertising rates. John Lippman, "CBS Strikes Out with Sports, Posts $156-Million Loss," Los Angeles Times, February 14, 1991, p. D-8.

156 Television Bureau of Advertising, "Trends in GNP, Ad Volume, TV Ad Volume, 1960-1995," April 1991; Communications Industry Forecast, pp. 22, 50, 52-53.

Advertising prediction implies network advertising growth slightly slower than the growth of GNP, 26.4 percent as compared with 33.2 percent, in nominal terms, over five years.

These predictions of advertising revenues are likely to overestimate future network revenues for several reasons. The Veronis and Suhler predictions are based on optimistic assumptions for the networks: no recession, slower ratings declines, and a stronger national advertising market. The network rating predictions may be optimistic because even if the growth of cable subscribership slows, cable viewing by cable households will almost certainly continue to increase. In addition, until recently networks have been able to raise the price per thousand viewers for advertising time.[157] Prices for network advertising time plunged in late 1990 and spring 1991, however, indicating that the networks may no longer have that ability.[158]

TELEVISION STATION ADVERTISING

Local television stations received $15.9 billion in advertising revenues in 1990, divided approximately equally between national spot and local advertising.[159] National spot advertising is considered a substitute for network and national cable advertising. Local station advertising is the closest television substitute for local cable advertising, though local cable advertising appears to compete more directly with local radio.

Inflation-adjusted television station advertising revenues are shown in the fourth column of table 25, which shows the sum of national spot and local advertising. Advertising is not the sole source of revenue for broadcast stations because both the three major networks and Fox pay compensation to their affiliates, though compensation also reflects sale of advertising time by the networks.[160] Aggregate television station advertising revenues grew

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157 Television Bureau of Advertising, "Trends in Television," p. 11.

158 "CBS Strikes Out With Sports, Posts $156-Million Loss," Los Angeles Times, February 14, 1991, p. D-8; Paul Farhi, "'Recession-Resistant TV Networks Feel Pinch," Washington Post, October 27, 1990, p. C-1; "Nervous Networks Wheel Early Deals," Variety, May 20, 1991, p. 21.

159 McCann-Erickson, "Insiders Report," December 1990.

160 Network compensation has also been declining recently, and is expected to continue to decline. "Big 3 affiliates adapting to changes in economy," Electronic Media, May 20, 1991, p. 39; "No quick end foreseen to network economic woes," Electronic Media, January 14, 1991, p. 20. Compensation averaged 4.5 percent of gross revenues for all affiliates in 1989, ranging from an average of 2.2 percent in the top ten markets to an average of over 9 percent in markets below 120. NAB, Television Financial Report, 1990.

much faster than GNP from 1981 through 1986 but more slowly after 1986, and declined in real terms in 1989 and 1990.[161]

Veronis, Suhler predict that television stations' share of total television advertising will fall through 1992 and then increase slightly as the rate of growth of cable slows. They predict that television station advertising will grow faster than network advertising, but still more slowly than GNP.[162] As noted above, the predictions are likely to be optimistic.

Because the number of stations has increased, the growth rate of advertising revenues per station has been lower than that of aggregate station advertising revenues. Dividing television station advertising revenues in table 25 by the number of commercial stations shows that advertising revenues per station in fact have fallen in the neighborhood of 4 percent per year in real terms from 1987 on.[163] The downward trend clearly began well before the current recession, so it is not a cyclical phenomenon.[164]

Stations that are imported as distant signals by cable systems reduce local station audiences but benefit little, in general, from their additional audiences because much of their advertising is local. However, superstations that have wide cable audiences (e.g., WTBS, WGN) can sell advertising in a national market and charge commensurate prices. So, for purposes of advertising, the audiences of distant stations are in some cases lost to broadcasters and in some cases transferred from local stations to superstations.

CABLE ADVERTISING

Inflation-adjusted cable advertising revenues are shown in the final column of table 25. Unlike broadcast advertising, cable advertising grew rapidly--between 9 and 22 percent a year in real terms, according to McCann-

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161 Communications Industry Forecast, p. 49; "$3-Billion Syndication Business Feels a Pinch," Los Angeles Times, January 21, 1991, p. F-12.

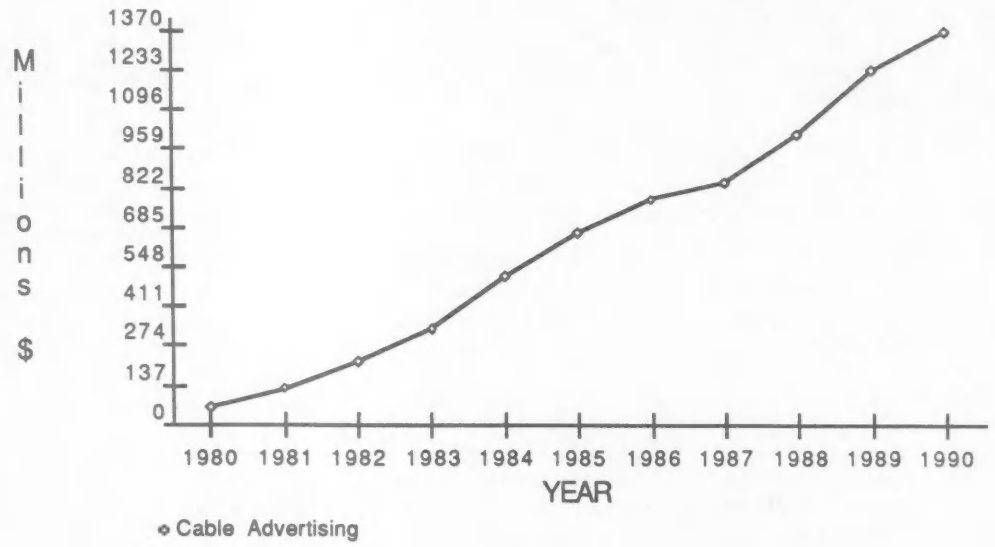
162 Communications Industry Forecast, pp. 22, 51.

163 Data on numbers of stations are taken from Television Bureau of Advertising, Inc., "Trends in Television," April 1990, p. 9.

164 Like the data reported here, the NAB data on average station revenues reported in chapter IV, which are disaggregated into several station categories, show rapid growth in the early eighties, ending in 1985 or 1986. The NAB data, however, show less pronounced declines in recent years than are shown here, and show a slight recovery for independents in 1989. See table 12.

revenues of cable network advertising are, by various estimates, between 18 and 25 percent as large as the revenues of national spot broadcast advertising, its closest broadcast substitute. Cable spot advertising consists mainly of time sold by the cable operator, primarily to local advertisers, and is most likely to be a substitute for local television or radio advertising. Such advertising generates between 5 and 8 percent as much revenue as local television broadcast advertising, by various estimates, but is growing very

FIGURE 11
CABLE ADVERTISING REVENUE (1982-84 DOLLARS)



rapidly.[165] So to date, cable advertising has succeeded better in competing with broadcast advertising at the national than at the local level.

As noted above, cable advertising remains an imperfect substitute for broadcast television, and particularly network, advertising, though that situation may be changing. Cable advertising has major advantages for some advertisers. Cable subscribers have higher incomes and more education, on average, than the general population, and consume more of many advertised goods and services, making cable subscribers desirable targets for

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165 The lower estimates are based on McCann-Erickson data presented in table 24; the higher estimates are from Paul Kagan Associates, The Kagan Cable TV Financial Databook (June 1990), p. 70.

advertisers.[166] So far, cable advertising has had a far lower cost per thousand viewers than broadcast advertising.[167]

Cable offers advertisers an opportunity to target advertising more efficiently by delivering audiences with specialized interests, while the economics of broadcasting requires mass-appeal programming and advertising. Many of the most successful cable channels, however, have been those with the most middle-of-the-road programming, and some cable channels are attempting to widen their audiences by showing more general-interest programming. To the extent that they succeed, they will become closer advertising substitutes for the broadcast networks. The extent to which the two strategies achieve success will depend in the long run on the distribution of program tastes in the population. With many channels, cable systems can pursue both strategies and attract both general-interest and niche audiences.

Cable systems cover smaller geographic areas than broadcast stations, so local cable advertising can target a narrower geographic audience. Because of its narrow reach and low cost, local cable advertising is considered a substitute for radio and even newspaper advertising as much as for local television advertising. Many local advertisers who would never advertise on broadcast television many find cable an attractive medium.

In sum, cable advertising can reach desirable audiences, can target audiences more narrowly than broadcasting by interests and geographic location, and has a lower cost per viewer. Its limitations are higher transactions costs to reach the same audience and smaller total audiences. The disparity in price between broadcast and cable advertising suggests an opportunity for developing interconnects among cable systems and other institutions to facilitate purchase of cable advertising.

Industry observers see great potential for growth in the cable advertising market, particularly the local market. Cable advertising is the fastest-growing segment of the video advertising market, with inflation-adjusted revenues growing at 22 percent in 1989. But considering that basic cable (i.e., cable-originated channels carrying advertising) comprises 6 percent of the video advertising market, by one estimate, but accounts for 20 percent of total viewing and 22 percent of viewing of channels carrying advertising, the potential remains for much greater growth, independent of likely increases in cable subscribership and viewing.[168] Moreover, advertisers

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166 Cabletelevision Advertising Bureau, Inc., Cable TV Facts 90, pp. 20-23.

167 "Changing Nature of Cable Advertising," Broadcasting, April 15, 1991, p. 78.

168 See tables 6 and 25.

are reported to believe that network advertising was overpriced in 1990, and to be considering cable as an alternative because of increased cable ratings.[169]

OTHER ADVERTISING MARKETS

Advertising alternatives to the video market include radio, newspapers, magazines, direct mail, yellow pages, and outdoor advertising. More distant alternatives include promotions such as coupons, conventions and trade shows, and point-of-purchase displays. Direct mail is the only national advertising medium with a share of advertising volume in the range of television's, 18.2 percent as compared with 22.1 percent. Expenditures on direct-mail and yellow-page advertising have in fact increased as a percentage of total advertising. The percentage of video advertising, which rose continuously through 1984, has fallen slightly since that time.[170] Still, none of the alternatives is believed to have the immediacy and effectiveness of television commercials. In addition some of the advertising substitutes for television, such as magazine publishing, have experienced a proliferation of outlets and audience fragmentation similar to that in television. Nevertheless, magazines are reportedly being considered as an alternative by many network advertisers.[171]

SUMMARY

The rapid growth of the video advertising market appears to have ended. The share of the networks in that market has been falling for a decade, and the share of cable has been growing. Since the mid-1980's real advertising revenues of the networks, and per-station real advertising revenues of broadcasters, have been falling. Network revenues have fallen less rapidly than audiences, but as audiences continue to decline, and as cable advertising becomes a better substitute for network advertising, the decline can be expected to worsen. Cable now has a much smaller share of advertising revenues than of viewership of channels carrying advertising, so cable advertising has great potential for growth.

The lag between audience loss and advertising loss has bought time for broadcasters and networks, but in the long run advertisers can be expected

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169 "'Upfront' Study Finds Weakness For Networks," Wall Street Journal, April 2, 1991, p. B-1.

170 Television Bureau of Advertising, "Trends in Advertising Volume," May 1991.

171 "'Upfront' Study Finds Weakness For Networks," Wall Street Journal, April 2, 1991, p. B-1.

to adjust to actual viewing patterns in the market. The current recession may hasten the adjustment by making advertisers more cost-conscious and causing them to buy time on the basis of cost per viewer rather than habit or notions of prestige or status.

X. THE PROGRAM MARKET

Growth in the number of video outlets has increased demand for programming. Because direct-payment media can charge on the basis of viewers' rather than advertisers' valuation of programming, and in some cases these media receive both advertising and subscription revenues, direct-payment media receive more revenues than advertiser-supported broadcasters from audiences of the same size. Thus they are able to present programming that would not be financially viable for broadcasters, and they may be able to purchase more expensive, and presumably more attractive, programming.

The ability to provide programming at the mix of quality and price that viewers want is crucial to success in the mass media. Entrepreneurs starting new ventures with DBS or MMDS often consider access to programming a key element in determining their success or failure, and more likely to be an impediment than the technical ability to deliver additional channels.[172] The Fox network's role in reversing the fortunes of many independent stations makes clear the importance of programming that appeals to viewers' tastes, as well as the efficiency of networking.

This chapter briefly discusses trends in network, syndicated, and local broadcast programming, and in cable programming. It then considers the determinants of program prices and how the media are likely to be affected by price changes. Then it examines the ability of broadcast and cable media to compete in program acquisition. Finally, the effects of the compulsory copyright license on that competition are considered.

NETWORK PROGRAMMING

The broadcast networks act as intermediaries between program producers and broadcast stations and, ultimately, audiences, matching programming with audience tastes in order to produce advertising exposures. Historically the networks acquired their pre-eminent positions by using low-cost program distribution techniques and aggregating large audiences, which gave them the advertising revenues to purchase expensive programming.

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172 "1990: Pivotal Year for DBS Hopefuls," Multichannel News, January 7, 1991 p. 4; "Pies in the Sky?" Channels, Dec. 3, 1990, p. 51; "Of Lobbies and Lawsuits," Channels, Dec. 3, 1990, p. 59. See also FCC Cable Report, para. 114.

In the days before multimedia competition, the primary way networks could increase advertising revenues was to increase audiences. The networks could increase the total audience--either by adding television households or by increasing hours of viewing of existing viewers--or they could increase their audience shares by luring viewers away from other networks. In both cases, increasing program expenditures in an effort to produce more popular programming--as long as doing so resulted in equal or greater increases in advertising revenues--was a rational strategy.

In the current market, however, audiences may not respond to additional network program expenditures as they have in the past. Because of changes in demographics and work behavior, viewing per houshold appears to have peaked. Additional mass-appeal programming by Fox and some cable channels has divided the audience into smaller shares, and specialized programming on cable channels has diverted some of the audience from middle-of-the road programming. Even among the networks, more diversity seems to be appearing. Fox, for instance, aims programming at a younger audience than the conventional networks. These changes appear to be permanent. In this environment, increasing program expenditures almost certainly will not bring back the networks' old audience shares, as CBS's unsuccessful attempt to increase its audience share by purchasing expensive sports programming suggests.

At the same time, the inputs used to produce network programming also can be used to produce programming for other outlets.[173] The increased demand for programming to fill additional channels has bid up the prices of the inputs into programming, leaving networks facing higher prices for programs of similar quality. Increased expenditures on programming probably buy smaller increments in program attractiveness than in the past.

For some kinds of mass-appeal programming, probably including many network series and much other programming made for television, reasonably good substitutes, in terms of audience size, can be created, and the possibility of expanding supply limits potential price increases. Other kinds of programming, including unique sports events such as the Super Bowl and the World Series, have high value to a large percentage of viewers and cannot be duplicated. These programs would generate high subscription revenues and are likely candidates to be bid away to pay or pay-per-view services.[174]

As a consequence of both declining audience shares and increased program prices, additional expenditures on progamming are likely to be less effective

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173 See John Dempsey, "Star-studded cable stable," Variety, June 10, 1991, pp. 1, 25, 32, and Reply Comments of the Association of Independent Television Stations, Inc. in MM Docket No. 89-600 (filed April 2, 1990) (INTV Reply Comments, pp. 34-37.

174 Considerable political pressure has arisen to keep highly valued sports events on free television.

than in the past in increasing audiences. Thus the profit-maximizing strategy for networks may be to reduce program expenditures and thus offer programs of lower perceived quality than in the past, particularly if the decline in audience shares is believed to be permanent and irreversible. If revenues are expected to be lower than in the past for the long-term future, the networks may have no choice but to reduce program expenditures over the long term. The three conventional networks in fact are reported to be introducing programs in less expensive genres in order to cut costs, and appear to be cutting back on news operations.[175] The cutbacks may in part simply involve more efficient use of resources, but they will also undoubtedly have some effect on program quality. These changes may to some extent be a response to a cyclical decline in revenues, but the long-term pattern in audience shares and program prices makes it likely that a long-term shift in strategy is at work as well.

The networks face the risk that large cutbacks in program expenditures may reduce the perceived quality and distinctiveness of network programming and further reduce the networks' ability to attract audiences, and that a downward spiral of program expenditures and audiences will result.[176] The outcome will depend on audience tastes in programming, and remains to be seen. At present, total audiences of individual networks in prime time remain several times as large as those of their nearest rivals, and, as shown below, for the foreseeable future the networks' revenues appear large enough to permit them to outspend cable networks on programming overall, though possibly not on particular programs such as made-for-TV movies, sports, and non-continuing series. While cable networks have the advantage of both advertising and subscription revenues, both are still based on relatively small audiences.

SYNDICATED PROGRAMMING

Non-network programming is distributed through the syndication market, and independent stations acquire most of their programming through that market. Historically the distribution techniques used for syndication were inherently more expensive than those used by the networks, and independent stations had relatively small audiences. Consequently syndicated programming was comprised primarily of low-cost programming, including game shows and off-network reruns. Much syndicated programming in recent years has been acquired, at least in part, by barter for advertising time rather than for cash alone.

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175 Tom Shales, "CBS Network Eliminates 400 Jobs," Washington Post, April 6, 1991, p. D-1; Jane Hall, "Networks' New News Strategy," Los Angeles Times, March 28, 1991, p. F-1.

176 Indeed the Association of Independent Television Stations, Inc. (INTV) states that such a downward spiral has already begun. INTV Reply Comments, p. 37.

The expansion in the number of independent stations over the past decade considerably increased the demand for syndicated programming, and satellites have reduced the cost of distribution. The syndication market in recent years has produced large numbers of new first-run programs. In fact, 18 of the 25 most popular syndicated programs, and eight of the top ten, are first run.[177] The others are off-network series. The syndication market has been highly profitable.

Recently, however, demand for syndicated programs, not counting Fox programming, has declined for two reasons. First, 35 percent of independents have now affiliated with the Fox network, which has reduced the demand for other syndicated programming. Second, many independent stations are in a weak financial position because of overexpansion and because of the current recession. Recently prices paid for syndicated programming are reported to have fallen.[178]

LOCAL PROGRAMMING

Local programming, particularly news and public affairs, is the single program service that, at least for the present, remains primarily the domain of local broadcasters; a desire to foster programming responsive to the needs of the local community provides the primary rationale for the FCC's public policy interest in local broadcast stations. Local news appears to be highly valued by viewers and profitable to stations. Network affiliates are reported to derive as much as a third of their revenues from local news.[179]

Smaller audiences for broadcast stations will mean declining revenues, which may lead to reduced expenditures on local programming (depending on expectations concerning the effects of program expenditures on audiences). The effects will vary greatly among stations, however. Major stations in large markets have sufficiently high profits that they may sustain considerable audience erosion without substantially reducing costs. In the largest markets, too, cable penetration appears to be lower than in smaller markets because of the large number of over-the-air alternatives, so that audiences probably will erode less there than elsewhere.

In smaller markets, however, the need to cut costs may in fact reduce expenditures on local programming, which may reduce the quantity or quality of news and public affairs programming. Local programming by independent stations, except those in the largest markets, probably will be affected

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177 Nielsen Station Index, Report on Syndicated Programs, November 1990.

178 "$3-Billion Syndication Business Feels a Pinch," Los Angeles Times, January 21, 1991, p. F-12.

179 Paul Farhi, "The Great Big Broadcast of 1991," Washington Post, March 11, 1991, p. F-1.

little because, as indicated above, most independents spend relatively little on local programming in any case. (See chapter IV.) The number of broadcast stations may fall, but the stations most likely to leave the market are the marginal ones that probably spend little on local programming.[180]

In all markets, a reduction in the number of stations may increase the audiences and revenues of the remaining stations. These stations may find it profitable to increase expenditures on local programming in competition with other stations in the market. Increased expenditures may be effective in picking up audiences from rival broadcast stations even though such expenditures could not halt long-term erosion to other media.

CABLE PROGRAMMING

The growth in the number of cable networks has resulted in a major increase in the quantity of programming produced, and a qualitative change in the types of programming offered as well. Where large numbers of channels are available, particularly with viewer payment, a profitable strategy for programmers is to offer kinds of programming that are highly valued by relatively small segments of the audience, rather than competing with programming similar to what is already being offered for a share of the mainstream audience.[181] The final distribution of programming will, of course, depend on the distribution of viewers' tastes. But to the extent that programming tailored to the tastes of smaller groups in the audience becomes available, these viewers' preferences will be met more closely, and many viewers will be made better off. Mainstream viewers also will be made better off if more choice becomes available within highly popular program categories. On the other hand, to the extent that viewer payment causes programming that would otherwise be available over the air to move to cable, viewers that do not now subscribe to cable will be made worse off because they will be unable to receive or will have to pay for service that was previously available without direct payment.

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180 A large percentage of small markets have independent stations. In 1989-90, of the 109 markets ranked below 100, 52 had one or more independent stations. Twenty had four or more affiliates. (At least some of these, however, were overlapping markets, so all stations probably do not reach the whole area.) Arbitron, Television ADI Market Guide, 1989-1990. Further, the financial performance of affiliates in small markets was better than that of independents. In 1989 at least 75 percent of independents in markets ranked below 100 reported losses, while between 50 and 75 percent of affiliates in markets 101-150 reported losses and between 25 and 50 percent of affiliates in markets 151-209 reported losses. NAB, Television Financial Report, 1990, pp. 44-49, 71. These figures suggest that independent stations are far more at risk than affiliates, and that the number of viewers that might lose the programming of network affiliates is small.

181 Bruce M. Owen, Jack H. Beebe, and Willard G. Manning, Television Economics (Lexington, MA: D.C. Heath and Company, 1974), pp. 81-90.

The expansion in the number of cable networks appears to be slowing down for the time being, however, in part because of cable systems' limited channel capacity. In the near future, however, video compression techniques will bring large increases in channel capacity, which will allow further innovations in programming, as well as more flexible scheduling.[182]

Cable programming has produced several general-interest networks that attract large audiences.[183] In addition, many other cable networks have attempted to defined themselves by creating programming that appeals to narrowly-defined audiences, and to rely on the specialized character of the programming to attract audiences.[184] All but three basic cable channels have ratings of less than 1 percent of televison households, but in the aggregate they account for a substantial share of viewing.[185] So cable presents a spectrum of programming, ranging from general interest to niche programming for small audiences.

Basic cable channels are increasing program expenditures, and are moving toward made-for-cable programming, including movies and first-run series. As cable advertising grows, moreover, cable operators will increasingly have an incentive to increase viewing as well as simply numbers of subscribers, and so to offer general-interest programming and otherwise behave more like the broadcast networks.[186] Programming on most basic cable channels, however, remains less expensive than that of the broadcast networks.

The most highly valued programming, such as first-run movies and certain sporting events, has been offered on pay channels or on a pay-per-view basis. Pay cable networks are reported to have shown as many original movies as the

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182 See chapter V above. Also see "Cable Industry Undergoes Shakeout as Networks Fight for Viewers," Washington Post, Dec. 19, 1990, p. D-1; Brian Donlon, "Enthusiasm for cable at 'all-time high,'" USA Today, March 22, 1991, p. A-1.

183 Among the most popular basic cable channels are WTBS, USA, ESPN, and TNT. See chapter VI for a discussion of cable program offerings.

184 Geraldine Fabrikant, "Channels Seek Identity in Made-for-Cable Films," New York Times, April 1, 1991, p. D-8.

185 See table 17 in chapter VI.

186 INTV points out that cable networks are increasingly developing and buying mass appeal programming like that on broadcast networks. INTV Reply Comments, pp. 32-38.

three major broadcast networks combined in 1990, in many cases paying as much and even more than broadcast networks do.[187]

PROGRAM PRICES

Both the number of channels to be programmed and the funds available for program purchase have increased greatly in recent years. The additional expenditures have resulted both in production of more programming and in dramatically higher program prices. As noted in chapter III, higher program prices have contributed to the reduced profits of broadcast stations and networks.

Prices of network programming are determined by negotiation between networks and studios, and the outcome depends to a large extent on their relative bargaining power. To the extent that broadcast networks ever had market power in the program acquisition market, additional purchasers of programming have eliminated that market power, allowing program producers to raise prices and reap more of the profits.[188] To the extent that some programs are uniquely popular and cannot be duplicated, increased demand can allow producers to maintain high prices and profits for an indefinite period. In such cases much of the profit generated by large audiences will be captured by the talent (directors, actors, athletes, etc.) that create the programs.[189] On the other hand, leaving aside the top hits, the long-run supply of programming may increase readily in response to increased demand. To some extent the price increases for programming may have resulted from short-run difficulties in expanding the supply of programming, in which case the the price increases may prove to be largely transitory.[190]

Syndicators typically appropriate some of the advertising revenues generated by their programs by charging stations on the basis of market size rather than charging a flat fee per program, and often by acquiring

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187 For instance, HBO recently spent a record $9 million for "The Josephine Baker Story." Electronic Media, November 12, 1990; Wall Street Journal, p. B-1, December 17, 1990. See also INTV Reply Comments, p. 34, and Network Fin/Syn Comments, Vol. I, pp. 82-83.

188 For an analysis of network program pricing see FCC, Network Inquiry Special Staff, "An Analysis of Television Program Production, Acquisition and Distribution," in New Television Networks: Entry, Jurisdiction, Ownership and Regulation, October 1980, pp. 591-602.

189 "NBC Faces Tough Decision on Its Costly, Aging Shows," New York Times, February 18, 1991, p. 34.

190 A great demand for programming from DBS operators or other new outlets, on the other hand, could cause prices to continue to rise.

advertising time through barter.[191] Thus, the price of a program will vary greatly between large and small markets, even though the product reaching viewers is the same. As broadcasters' audiences fall, prices paid for programs can be expected to adjust to the revenue potential of the market, as has in fact occurred through the use of barter, where the value of the advertising spots traded depends on the audience. So the decline in program quality may be less than would be expected from the decline in expenditures.

Broadcast stations and networks will remain important programming outlets for the foreseeable future. Therefore, in order to keep this distribution system healthy, program suppliers are likely to absorb part of the effects of smaller audiences by accepting lower license fees. (Cases of marginal programming in small markets, where the cost of distributing a program may approach the revenue it can produce, are exceptions.)[192]

As prices broadcasters can afford to pay fall, however, it seems likely that outlets having both advertising and subscription revenues will increasingly be able to outbid broadcasters for some programming, particularly that which is highly valued by large audiences. Broadcast network executives believe that cable networks will be able to outbid them for major sports events, and public television is already losing some programs to cable.[193] Again cable networks' ability to outbid broadcasting networks depends on the distribution of audience tastes. But because prices broadcasters face for programs depend in part on the audiences they can attract, and because the long-run supply of much broadcast programming appears easily expanded, we expect that much programming will remain available at prices broadcasters can afford to pay, though the most popular talent and programming may be lured away to competing media.

REVENUES FOR PROGRAM PURCHASE

Large-scale participation of cable networks in the market for program acquisition may both bid up prices of inputs and increase the general level of program prices, which could lead to broadcasters being outbid for specific popular programs. If popular programming moves to cable, the movement of audiences from broadcast to cable viewing will accelerate. Although pay and pay-per-view channels do not compete directly with broadcasters for advertising dollars, all cable channels compete with broadcasters for viewers.

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191 See Noll, Peck, and McGowan, Economic Aspects of Television Regulation, pp. 70-79 for a discussion of non-network program pricing.

192 For programming produced in house, such as news, the price of program inputs, with the possible exception of salaries of a few stars, does not vary with audience size as does the price of purchased programming.

193 "Public TV's once-unique niche threatened by cable look-alikes," Electronic Media, October 22, 1990, p. 3.

Financial data from broadcast and cable networks can shed light on trends in the revenues of both advertiser-supported broadcasters and cable networks and on their ability to compete in program purchase.[194] It should be noted that the ability of various media to purchase programming of a given quality is a different issue from market power in program purchase. Here the question is whether given purchasers have the ability to make roughly comparable program expenditures, not the ability of firms to behave anticompetitively.[195]

Though the data are limited, rough comparisons can be made of revenues and program expenditures between broadcast and cable networks. Data on gross advertising revenues for the three broadcast networks are available from McCann-Erickson. The Television Bureau of Advertising makes projections of expenditures based on these data.[196] Total program expenses can be estimated by extrapolating the proportion of gross revenues expended for programming from earlier years, assuming that, in the future, networks will be able to spend at least as large a proportion of gross revenues on programming as they have in the past. An assumed ratio of programming expenditures to gross advertising revenues of 0.65 was used to estimate current program expenditures and to project programming expenditures out to 1995.[197] Three-network

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194 Declining revenues, at least in the short run, do not automatically result in declining program expenditures. Commercial broadcast and cable networks strive to maximize profits, and the profit-maximizing level of expenditure on programming will depend on the response of audiences, and advertising revenues, to program expenditures.

195 The relevant market for the purpose of the financial interest and syndication rules, for example, includes not only broadcast and cable, but theatrical movies and home video as well. In this market, individual broadcast networks have small market shares. A large number of cable networks are independent purchasers in this market, and some pay high prices for programming. For a discussion of network market shares in this market, see Robert W. Crandall, "The Economic Case Against the FCC's Television Network Financial Interest and Syndication Rules," Network Fin/Syn Comments, Appendix C.

196 The projections assume growth of GNP of 24.7 percent between 1990 and 1995. During that period three-network advertising revenues are projected to grow 30.1 percent.

197 Data from the FCC TV Broadcast Financial Data compilation show that for networks the ratio of program expenses to gross advertising revenues rose from 0.59 to 0.65 between 1975 and 1980. The networks are now reported to spend between 75 and 85 percent of their budgets on programming. John Lippman, "Networks Push for Cheaper Shows," Los Angeles Times, February 19, 1991, p. D-1. In 1980, according to FCC data, networks' net revenues were 80.6 percent of gross advertising revenues. If budgets are based on 100 percent of net revenues, estimated program expenditures are calculated to lie between 60.5 and 68.5 percent of gross revenues.

revenues are $9.4 billion in 1990 and projected to be $12.2 billion in 1995. Network program expenditures are estimated at $6.1 billion in 1990 and $7.9 billion in 1995.

Data are available from Paul Kagan Associates on revenues and programming expenditures of basic and pay cable networks.[198] Projections of program expenditures are made on the assumption that they will remain the same percentage of gross revenues as in 1990. The result is revenues of $4.6 billion in 1990 and $7.3 billion in 1995, and program expenditures of $2.4 billion in 1990 and $3.8 billion in 1995, for all cable networks. Revenues of cable networks were thus 49 percent of those of broadcast networks in 1990, and are projected to increase to 60 percent in 1995. Cable network program expenditures were 39 percent of the broadcast network total in 1990 and are projected to be 48 percent in 1995.

The cable revenue data reported here should be interpreted with caution, and should probably be considered a lower bound for cable program expenditures. Information about individual cable networks suggests that the cable program expenditures reported here may be lower than actual expenditures. Cable networks are reported to have spent almost $700 million on original non-sports programming in 1990 and almost $2 billion on sports rights in 1989-90, as compared with the $2.3 billion total reported here.[199] Cable networks are reported to have spent about the same amount in total on made-for-TV movies as broadcast networks.[200]

Cable program expenses in 1990, according to the Kagan data, made up about 16 percent of the total including the conventional broadcast networks, the Fox network, stations, and syndicators. This is a modest amount, considering that in 1990 cable programming attracted 32 percent of total viewing, and that viewers have to pay for cable service. Excluding distant signals and superstations, for which cable operators apparently pay below-market prices through the Copyright Royalty Tribunal, cable viewing still makes up 26 percent of the total.[201]

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198 Paul Kagan Associates, "Cable TV Programming," August 31, 1990, p. 2, and Paul Kagan Associates, "The Pay TV Newsletter," April 24, 1990, p. 3. Pay-per-view networks are not included, but their total gross revenues were only $136 million in 1990. "PPV and DBS: Partners in Uncertain Future," Broadcasting, February 18, 1991, pp. 49-50.

199 Separate Statement of Commissioner James H. Quello, Mass Media Docket No. 90-162, pp. 6-7; Goldman, "Cable-TV Networks Strive to Stand Out From the Crowd with Original Programs," Wall Street Journal, December 17, 1990, p. B-1.

200 Ibid.; Cable World, May 20, 1991, p. 1.

201 See the discussion of the compulsory copyright license below.

Revenues of basic cable networks are derived from advertising and from license fees, which are the per-subscriber fees paid by cable operators to networks. License fees, the "second revenue stream" available to basic cable in addition to advertising, accounted for 33.2 percent of gross revenues of basic cable networks in 1990. The share of license fees is projected to fall over time as advertising revenues rise, but to remain at 30.7 percent in 1999.[202] These percentages are smaller than expected, since industry reports suggest that about half of cable networks' revenues come from license fees.[203] Pay cable networks, of course, receive 100 percent of their revenues from subscription fees. Kagan's data show basic cable revenues--and program expenditures--rising much faster than comparable pay cable figures.

The cable revenues reported here are spread over a large number of networks (currently nine pay networks and 111 basic networks, not counting home shopping networks) with a wide range in programming strategies from from low-cost niche programming to high-cost first-run mass-appeal programming. Consequently average per-channel revenues of cable systems are very low. But the variation in revenues among cable networks is high. Consequently the more popular cable networks have the potential to spend much more on programming than the comparisons here would suggest.[204] Considering the difference in the numbers of broadcast and cable networks, we can conclude that some cable channels have the revenues to compete as serious rivals in the program acquisition market, but for the near-term future broadcast networks will still be able to outspend them.

The ability of cable to attract viewers with relatively inexpensive programming--even when viewers have to pay for it--suggests the great value viewers place on breadth of choice and on programming narrowly tailored to specialized tastes. At the same time, the large programming expenditures of the broadcast networks may suggest that broadcast networks' programming funds are being spent inefficiently. The networks' high program expenditures also

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202 Calculated from Paul Kagan Associates, "Cable TV Programming," August 31, 1990, p. 2.

203 In a 1986 filing with the FCC, ESPN, for instance, stated that subscription fees accounted for "almost half" of its revenues. Comments of ESPN, Inc., in General Docket 86-336, filed October 17, 1986, p. 3.

204 Press reports of quarterly earnings of Turner networks imply that CNN has annual revenues above $400 million, and that TBS and TNT combined have annual revenues greater than $500 million. Geraldine Fabrikant, "Turner Broadcasting Profit Fell 11.6% in First Quarter," New York Times, May 7, 1991, p. D-19. ABC Video Enterprises, which consists primarily of ESPN, had revenues of $546 million in 1990. "Down Year in Profits for the Big Three," Broadcasting, May 6, 1991, p. 19. These revenues compare with an average of $3.1 billion apiece for the three major broadcast networks.

suggest the possibility that some of the profits of broadcasting are being passed on to the program production industry in high payments for top actors and other talent, and that reduced expenditures on programming might not result in commensurate reductions in quality.

In some cases, the combination of viewer payment and large audiences has allowed cable networks to pay higher prices than the broadcast networks could profitably pay. Sports programming on ESPN, TNT, and other networks appears to be an example. Another example is loss of programming to cable from public television, whose source of revenue is voluntary viewer payment rather than advertising.

In assuming that cable program expenditures will remain a constant percentage of revenues, these projections may understate future cable program expenditures. Cable networks, particularly basic networks, now spend a far lower percentage of their gross revenues on programming than do broadcast networks. Because of economies of scale, broadcast networks' non-programming costs are probably lower than cable networks'. But also cable networks' subscription and advertising revenues have grown rapidly, and program expenditures may have lagged; basic cable network program expenditures have in fact fallen as a percentage of gross revenues. Furthermore, because profit margins for cable networks such as ESPN, TBS, and CNN appear to exceed substantially the broadcast networks' margins, it appears that at least the most successful cable networks could increase their program expenditures considerably.[205] Press accounts report that cable networks are in fact increasing program expenditures, while broadcast networks are experiencing losses and are attempting to slash program costs.

COMPULSORY COPYRIGHT LICENSE

A factor affecting both broadcast and cable revenues and program expenses is the compulsory copyright license, under which many television broadcast signals are retransmitted by cable television systems. Royalties paid by cable operators under the compulsory license are distributed to copyright holders by the Copyright Royalty Tribunal.[206] While the bulk of these royalties go to the producers of entertainment series and to the various sports interests, a small fraction, roughly 5 percent of the total, goes to

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205 See, e.g., "Down Year in Profits for the Big Three," Broadcasting, May 6, 1991, p. 19, and Turner Broadcasting System Annual Report for 1990.

206 The compulsory copyright license raises the issues, discussed in chapter II, of conflict between efficient production and efficient distribution of programming. Requiring cable systems to pay market prices for programming would improve the incentives for program production, but would probably raise prices to viewers and cause service to be denied to some viewers who would place some value on it. See chapter II above.

television broadcast stations, as compensation for the programming, such as news, that they produce themselves.[207]

The compulsory copyright license allows cable systems to acquire the programming of broadcast stations for license fees that are believed to be, in in general, below the market price for the programs.[208] Local stations are essentially free to cable systems, and fees for distant signals appear, in most cases, to be below the market price. Cable systems thus benefit from programming that broadcasters paid for but that the cable systems, for the most part, did not. This underpriced programming gives cable systems a competitive advantage relative to broadcasters. It also distorts program choices by giving cable systems an incentive to offer distant signals rather than cable networks, and creates more competition to local stations from distant signals than otherwise would be the case. If the cable systems had to pay the market price for the programming, they might choose to purchase original programming, presenting viewers with a different range of choices.

Because a substantial amount of the viewing of cable households is of television broadcast signals, were the compulsory license to be eliminated and full copyright liability imposed on cable systems, the potential would exist for a "second revenue stream" for television broadcast stations and networks. An end to the compulsory license and imposition of retransmission consent would allow broadcasters to negotiate for payment for the use of their programming by cable systems that reflected the value of the programming to the cable system, and might give broadcasters more revenue with which to purchase more expensive programming.[209]

SUMMARY

Broadcast networks and stations will have declining audiences, revenues, and program expenditures in the future. Much of the decline in expenditures will occur through a reduction in prices, so that the decline in broadcast revenues will be shared with the program production and syndication industries. Nevertheless, for both networks and stations, the quality and distinctiveness of programming will probably also be adversely affected. The quality of local programming, comprised mostly of news and public affairs, may also decline.

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207 Copyright Royalty Tribunal, "Summary Fact Sheet," February 1991.

208 Report in General Docket 87-25, 4 FCC Rcd 6562 (1989), paras. 67-75.

209 A CBS representative estimates, based on fees paid by cable systems to cable networks, that retransmission consent would result in fees of $72-$160 million per year for CBS and its affiliates. "CBS Believes Retransmission Consent Plan is 'Ahead of Schedule,'" Communications Daily, June 3, 1991, p. 3.

Because of the large number of channels available, basic cable can present both general-interest programming resembling that of the networks and highly focused special-interest programming. While pay and pay-per-view cable present some expensive, highly popular programming, overall expenditures on cable programming, particularly basic cable programming, are lower than those for broadcast network programming, though cable expenditures are rising and basic cable has begun to present first-run series and other programming resembling that of the broadcast networks. Cable is estimated to account for only 16 percent of total program expenditures but about 32 percent of audiences.

Broadcast networks and stations will continue to have access to sufficient funds to outspend cable for programming--at least until the end of this decade--but their ability to do so is declining, and program expenditures do not necessarily translate into audiences. The ability of broadcasters to compete on even terms for programming would be enhanced by an end to the compulsory copyright license and imposition of retransmission consent.

XI. THE FUTURE OF BROADCAST TELEVISION

The broadcast television industry has suffered an irreversible long-term decline in audience and revenue shares, which will continue through the current decade. The effects will differ greatly, however, for various groups of firms in the market and for different groups of viewers.

TELEVISION STATIONS

Broadcast television stations will experience declining revenues and increasing program costs. Network compensation will fall with network advertising revenues, and national spot advertising will erode partially to cable. The potential for greatly increased competition from cable in local advertising is clear as well.

The effects of these trends will vary greatly across stations and markets. The current revenues and profits of broadcast stations vary enormously with market size. In large markets, audiences probably will remain large enough to support many television stations, particularly since over-the-air alternatives are so plentiful in these markets that cable penetration remains relatively low. Broadcasters in large markets will see their profits fall and probably will have to cut costs. But in the largest markets, profits and costs are so far above the minimum required to operate a station that for many of the largest stations, great declines in revenue could probably occur without appreciably affecting service. In addition, program prices likely will fall as the revenue potential of the programs falls, so only part of the effect of reduced expenditures will be felt in reduced program quality. Some broadcasters may scale back program production, and to the extent that they do, the quality of local programming may suffer. Since we have little ability to measure how viewers value local programming, it is not clear how much the welfare of viewers would be affected. Some marginal stations in large markets will probably leave the market, but many healthy stations can be expected to remain.

In smaller markets the effects on television broadcasting probably will be more severe. In markets below the top ten, more than half of all independent stations are already experiencing losses, at least on paper.[210] Here, a reduction in the number of stations may occur, which would reduce over-the-air choice. One can speculate, however, that local programming will be affected little by stations leaving the market, since marginal stations apparently spend very little on local programming. In the short run, the revenues of remaining stations would increase; the long-run effect on revenues and programming of remaining stations is unclear. The number of markets in which broadcast stations provide a competitive check on cable systems probably will decline.

Public television stations, though not supported by advertising, may also face declining revenues because of declining audiences. Supported by voluntary viewer payments and government and charitable contributions, public television was created as a response to the failure of the advertiser-supported program market to produce programming to suit the tastes of small audiences. With the advent of commercial viewer-supported programming on cable, many of the needs public television was intended to fill have begun to be met by cable. In the future, government funding of public television may have to be justified on different grounds.

Despite a decline in viewing, a substantial audience for broadcast television will remain in 1999. About one-third of households in the United States probably still will not receive cable. Even if cable households shift their viewing increasingly toward cable channels, these non-cable households will still provide large audiences for television advertisers. The households that do not subscribe to cable will be less valuable to broadcasters, on average, than cable households would have been because they will disproportionately be low-income households that advertisers find relatively less valuable, or they will not subscribe to cable because they watch little television or receive satellite service. But as long as most broadcast stations are carried by cable, they will still be able to draw audiences from among cable subscribers as well as non-subscribers.

For the foreseeable future, a considerable broadcast audience will remain and will continue to provide broadcasters with advertising exposures to sell. In addition, broadcasters have an opportunity to diversify by using their expertise in programming to offer programming to cable channels and other media. This opportunity will be most valuable to large-market stations that have extensive programming operations. The overall result of these changes is likely to be a smaller over-the-air television industry (i.e., fewer stations).

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210 NAB, Television Financial Report, 1990, pp. 1-16.

NETWORKS

For the three conventional television networks the decline in audience shares will probably slow over the decade as cable matures and as marginal independents go dark. On the other hand, cable subscribers' viewing will shift increasingly to cable-originated channels. In 1989/90, each of the three major networks averaged roughly 19 percent of prime time viewing and 12 percent of all-day viewing. (See tables 8 and 9 above.) Since the trend away from broadcast viewing will continue, one could speculate that by 1999 average network prime time viewing shares might fall to 15 percent, while their average all-day viewing shares could well sink to 8 percent. As cable advertising becomes a better substitute for network advertising, prices of network advertising time will fall, and advertising revenues will fall along with audiences.

Networks have responded to reduced revenues by cutting costs, particularly program expenditures, and will almost certainly continue to do so. Another way for networks to cut costs will be to reduce compensation to affiliates, which may result in affiliates' carrying less network programming, further reducing network audiences. Less expensive network programming, coupled with better programming on competing outlets, will erode the reputation for superior production quality that historically distinguished the broadcast networks. Viewers will increasingly see cable and broadcast programming as interchangeable. The Fox network will provide a close substitute for the traditional networks in terms of both audience perception and nationwide advertising reach. Other nationwide distribution media may develop through some combination of cable and DBS. The networks will continue to lose their uniqueness to both audiences and advertisers, leaving them increasingly three program packagers among a large number.

As program packagers, networks have the flexibility to serve various distribution channels. As the broadcast advertising market shrinks, the networks will have an incentive to diversify into other markets. Indeed, to the extent that regulations restrict their ability to expand their broadcast activities, the networks will have significant incentives to diversify into non-broadcast media. Two of the three broadcast networks already have interests in cable programming ventures, and their programming is delivered to home satellite dishes in areas where it is not available over the air. In the future the networks may provide programming for DBS or MMDS systems as well. Thus the networks' long-term prospects are not wholly tied to the fortunes of over-the-air broadcasting, and at some point the networks may find it more profitable to supply programming directly to cable or other media, or directly to the home, than to broadcast affiliates.

For the short term the continued viability of networking is suggested by the success of the Fox network and its affiliates. Fox's success, ironically, is to some extent attributable to the growth of cable, since many Fox affiliates are UHF stations that depend on cable carriage for much of their coverage. Moreover, in some cases, Fox supplies its programming directly to cable systems if no local broadcast affiliate is available. It is not clear whether enough independent stations remain to make yet another broadcast network viable. For the near future, the three major broadcast

networks will attract larger total audiences than the alternatives, and will outspend their competitors on programming.

VIEWERS

For viewers, the effects of additional video competitors so far appear to have been highly beneficial. Not only do viewers have the choice of purchasing additional program services, but the number of advertiser-supported channels has increased, providing more choice even to those who do not pay for programming.

In future, however, the number of broadcast television stations is likely to decline, and the quality of broadcast service may deteriorate. The effects will vary for different groups of viewers who face reduced broadcast service. For households that subscribe to cable or another multichannel service, a reduction in the number of broadcast stations they can receive or movement of some programming from broadcast to basic cable will cause little or no welfare loss because the cable system almost certainly will replace the lost station with another channel. The only possible loss may be a less desired mix of programming. But since the station that left the market presumably will be the one with the least popular programming, the loss is probably small. We have noted that marginal stations probably produce little local news or public affairs programming, so the loss of local content probably will be negligible. If broadcast programming moves to a pay (or particularly a pay-per-view) service, viewers will be worse off because they will have to pay for what was previously free. But that effect must be balanced against the supply of previously unavailable programming that would be supplied on a subscription basis.

Viewers who are passed by cable but do not subscribe will experience a loss of welfare if the number of broadcast stations or the quality of programming declines.[211] Those who value television highly but cannot afford to subscribe will suffer the greatest loss. Those who currently choose not to subscribe because they do not value television programming highly or because over-the-air programming suits their tastes will experience a smaller loss. Some will continue not subscribing to cable and experience a reduction in service. The associated welfare loss will depend on their taste for television as well as the magnitude of the reduction in service. Some will subscribe to cable, choosing to pay for service that, while more valuable than what is available off-air, may be inferior to what they previously received without charge.

Viewers not passed by cable will also experience a loss of welfare if broadcast service deteriorates. They can acquire a partial substitute for broadcast service with videocassettes or, in most cases, with home satellite dishes, which, although now expensive, will probably drop in price over the

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211 About 35 percent of television households are passed by cable but do not subscribe. See table 15.

coming decade. While both offer great quantities of programming, neither satellite dishes nor VCRs provide local service. On the other hand, uncabled areas are frequently remote areas where broadcast reception is poor, so the lost over-the-air service may have had little value. This group of viewers is small: 8.8 percent of television households are not passed by cable. About 20 percent of those households have home satellite dishes, and in future DBS service will almost certainly be available in most cases.

In large markets, over-the-air service probably will remain plentiful. Large populations will still be able to support many stations, and good over-the-air service will keep cable penetration lower than in other areas. In smaller markets the loss of one station would have a much larger impact on the overall quantity of over-the-air service. In these markets, where over-the-air service offered less variety to begin with, the gap between what is available from broadcasters and from multichannel providers will probably widen. However, these developments will affect relatively few television households.[212] Moreover, it is important to remember that by historic standards, the existing level of service is high: the number of commercial television stations in operation is 50 percent greater than in 1980, and recipients of multichannel services have enormously greater choice available to them. For those to whom cable or other multichannel service is unavailable, or who cannot afford such service, however, the loss of broadcast service would be a significant loss.

QUALIFICATIONS

These predictions assume a continuation of current trends. Some dramatic departure from these trends may drastically alter the outcome. One such occurrence could be early development of a highly successful DBS service. A DBS system could provide nationwide coverage, even in areas not reached by cable or broadcasting; could aggregate audiences with unusual tastes even more efficiently than cable; and could have enough channels to offer near video on demand. The single obvious drawback of DBS is that it probably could not offer local programming, though regional programming would be technically possible. A popular DBS service would accelerate the migration of audiences away from terrestrial broadcasters.

If, contrary to expectation, the networks networks were to decouple from their local affiliates, television broadcasting would be substantially less popular. Decoupling might at some point be profitable to the networks if other media could pay as much for programming as the networks derive from broadcast advertising. This probably would leave the former affiliates with less attractive program choices, though as the gap in quality between network

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212 Only 15.2 percent of television households live in small television markets, i.e., those below the top 100. Moreover, those markets are now served by 35.1 percent of the total number of television broadcast stations in the United States. See Arbitron Ratings Company, Television ADI Market Guide 1989-1990.

and other programming narrows, the potential loss to the affiliates also will fall. The affiliates would lose network compensation but would regain advertising spots to sell. The success of the Fox network, and of some cable networks, however, suggests that, at least on some scale, broadcast networking can still be highly profitable.

Further, the cable industry may evolve in ways that make it a closer substitute for broadcast television. Nothing prevents cable systems, or groups of them, from producing and transmitting local programming. Local cable news channels are increasing in number and are beginning to duplicate the last remaining unique service of broadcast stations. And while no one appears to be contemplating such a service, free, (i.e., having no subscriber fee whatever) advertiser-supported cable channels could conceivably garner some of the remaining audience of nonsubscribers. If so, cable and DBS between them could offer all the services now provided by over-the-air broadcasters.

On the other side of the ledger, new technologies could allow broadcasters to compete more effectively with multichannel media. Video compression techniques, for instance, could allow several channels of programming to be offered on a single six-megahertz broadcast channel, offering much more diversity and choice and a service more closely resembling cable. Interactive technologies, permitting over-the-air shopping and opinion polls, could increase the attractiveness of broadcast television.

Television broadcasters, and the networks that supply them, will clearly decline in relative importance and probably in number or size as well over the next decade. The power of the networks that the Commission has historically sought to curb has succumbed to technology and competition. Broadcast television, however, will remain a reasonably prominent feature of the American landscape.

IMPLICATIONS FOR REGULATION

Changes in regulation may permit television broadcasters to achieve efficiencies that could allow them to become more effective competitors in an increasingly multichannel environment. Rules imposed to curb network or station market power or concentration of control over programming when television broadcasters were the video marketplace may be counterproductive in today's competitive market.

The business of broadcast television is attracting audiences for sale to advertisers by purchasing, producing, scheduling, and distributing programming. The technical aspects of delivering broadcast signals are a small component of the business: in 1989, engineering expenses averaged less than 9 percent of total expenses for all size classes of stations.[213] Allowing

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213 NAB, Television Financial Report, 1990, pp. 1-16.

networks and stations to apply their expertise in acquiring and distributing programming in ways they find advantageous, both within broadcasting and in other media, will improve broadcasters' ability to provide service the public values. This will permit them to compete more effectively.

Commission rules that restrict stations' and networks' ability to deliver service should be reconsidered. Among these are the various rules restricting ownership of broadcast stations and ownership of other media along with broadcast properties. In today's market, for instance, common ownership of larger numbers of broadcast stations nationwide, or of more than one station in a market, may permit exploitation of economies of scale and reduce costs or permit improved service. Joint newsgathering operations, for instance, might permit improvements in the quality of local news coverage. For these reasons, the Commission should eliminate its broadcast multiple ownership rules, relax the duopoly rules to permit common ownership of television stations unless their grade A contours overlap, and consider eliminating the duopoly rules for unaffiliated UHF stations.

Similarly, allowing combinations between broadcasters and other media, as long as they did not decrease the competitiveness of local broadcast markets, could allow efficient use of programming and other resources. Hence, Congress should repeal the broadcast-cable crossownership prohibition and the Commission should eliminate its own prohibition, perhaps subject to certain conditions. Rules that prevent vertical integration of the major broadcast networks into program production and syndication, despite the fact that their competitors appear to find such integration valuable, also cause broadcasters to operate under a competitive handicap and should be reconsidered. In particular, the Commission should eliminate its broadcast network-cable crossownership ban.

The efficient adoption of the new technologies described above also will require some regulatory action. The dual networking rules, for instance, may hinder the offering of multiple channels by a single broadcaster, and network dominance, which the rules were intended to curb, will scarcely be an issue in the future multiple-provider environment.

The evolution of the broadcast industry may entail considerable change in the use of spectrum. In the short run, the number of broadcast stations is likely to decline. In the longer run, video compression techniques will allow the transmission of multiple channels in the spectrum now used for a single channel, or to broadcast HDTV in an NTSC channel. Such changes will reduce the value of spectrum for broadcasting. The Commission will have an opportunity to allow broadcasters to acquire an additional source of revenue by using their spectrum for other, higher-valued purposes in addition to broadcasting.

In the shorter run, allowing broadcasters and program producers to receive market value for the use of their programming by cable systems would redress the competitive balance between broadcasting and cable. Full copyright liability for cable systems and retransmission consent for local broadcast stations might give broadcasters an additional source of revenue.

Economic and technological developments over the past 15 years have vastly expanded the array of video choices available to the American public. Increased time diversity, choices, and new technologies have given, and increasingly will give viewers the ability to control their television viewing. The new video marketplace is making it possible, therefore, for viewers to signal their preferences far more precisely than before, and programmers are responding by producing more targeted programming to serve the increasingly segmented market. Advertisers are adjusting their purchases of commercial time to target the geographic and demographic groups most valuable to them. These trends will continue producing a diverse viewer-centered video marketplace. Broadcast television will have its place in this new world but as one player among many.

APPENDIX

DEMOGRAPHIC TRENDS AND BROADCAST AUDIENCES

Changes in the nation's population, family structure, and work behavior in the next decade will greatly affect both tastes for video services and the resources households have to purchase these services. Because changes in the population will almost certainly have a considerable effect on broadcast viewing, we examine some of the more important trends here.

Table 26 shows past and projected population trends in the United States. In the period since 1975 the population has grown at roughly 1 percent per year. Fewer births and growing life expectancy have resulted in an aging population: the median age rose from 28.7 years in 1975 to 32.7 years in 1987.

TABLE 26
POPULATION OF THE UNITED STATES, 1975-2000

YEAR	TOTAL POPULATION	% CHANGE IN 5 YEARS	MEDIAN AGE
1975	215,973		28.7
1980	227,757	5.5	30.0
1985	239,279	5.1	31.5
1990*	249,891	4.4	33.0
1995*	259,619	3.9	34.8
2000*	267,747	3.1	36.5

SOURCES: 1975-1987, U.S. Bureau of the Census, Statistical Abstract of the United States, 1989 (109th Edition.) Washington, D.C., 1989, p. 13; 1990-2000, U.S. Bureau of the Census, Current Population Reports, Series P-25, No. 1017, Projections of the Population of the United States by Age, Sex, and Race: 1988 to 2010, U.S. Government Printing Office, Washington, D.C., 1988, pp. 20-21, 29.

*Projected.

The population of the United States is projected to grow much more slowly over the next decade than in the past. Total population growth, according the the Census Bureau's mid-range projections, will be 3.9 percent between 1990 and 1995 and 3.1 percent between 1995 and 2000. About 30 percent of the growth will result from immigration.[214] The median age will continue to rise to 36.5 years in 2000. The proportion of working-age people in the population will rise slightly relative to the numbers of children and the elderly.[215]

Family structure continues to change. As shown in Table 27, young people are marrying later, marriage rates continue to fall, and divorce rates remain close to the historic peak.[216] As a result, a larger percentage of the population is single or divorced. Birth rates remain low

TABLE 27
SELECTED FAMILY CHARACTERISTICS, 1975-1987

	1975	1980	1985	1987
Median Age at 1st Marriage				
Men	22.7	23.6	24.8	
Women	20.8	21.8	23.0	
Marital Status				
(% of Population 18 or Over)				
Single	17.5	20.3	21.5	21.8
Married	69.6	65.5	63.0	62.9
Widowed	8.3	8.0	7.9	7.5
Divorced	4.6	6.2	7.6	7.8
Average Family Size	3.4	3.3	3.2	3.2
Births to Unmarried Women	14.2	18.4	22.0	
(% of All Births)				

SOURCE: Statistical Abstract, 1989, pp. 42, 66, 86.

214 U.S. Bureau of the Census, Current Population Reports, Series P-25, No. 1017, Projections of the Population of States, by Age, Sex, and Race: 1988 to 2010, U.S. Government Printing Office, Washington, D.C., 1988, p. 27.

215 Ibid., p. 10.

216 Statistical Abstract, 1989, p. 85.

TABLE 28
HOUSEHOLDS OF VARIOUS TYPES, 1975-2000
(Percent of All Households)

Year	Families		Nonfamily Households	Total
	Married Couple	Single Householder		
1975	66.0	12.1	21.9	100
1980	60.8	12.9	26.3	100
1985	58.0	14.3	27.7	100
1990*	56.3	14.5	29.2	100
1995*	54.7	14.8	30.4	100
2000*	53.1	15.1	31.8	100

SOURCE: Statistical Abstract, 1989, p. 45.
*Projected

by historic standards.[217] Between 1975 and 1990, as shown in Table 28, married-couple households declined from 66.0 percent to a projected 56.3 percent of households, while families headed by a single person increased from 12.1 to a projected 14.5 percent of the total. Only 70.8 percent of the population were projected to live in married-couple families in 1990.[218] Between 1975 and 1986, births to unmarried mothers increased from 14.2 to 23.4 percent of the total.[219]

The proportion of individuals living alone and of single-parent families is expected to continue to rise, as shown in Table 28. According to the Census Bureau's mid-range projections, which assume a reduction in the rate of change in marriage and divorce rates, married-couple families will fall to 53.1 percent of total households by 2000.

Work behavior is changing as well. As shown in Table 29, the proportion of women in the labor force has risen strikingly, from 46.3 percent of women over 16 in 1975 to 56.0 percent in 1987. Even more dramatic has been the change among women of child-rearing age. By various measures labor force participation rates for this group, even those with young children, have risen by about 20 percentage points over the period since 1975. Labor force participation rates are higher for divorced than

217 Ibid., p. 61.

218 Ibid., p. 48.

219 Ibid., p. 66.

TABLE 29
CIVILIAN LABOR FORCE PARTICIPATION RATES, 1975-2000
(Percent)

Year	Total	Male	Female			Wife, Husband Present	
			Total	25-34 Years	35-44 Years	Children < 2 yrs.	Children < 1 yr.
1975	61.2	77.9	46.3	54.9	55.8	30.8	44.9
1980	63.8	77.4	51.5	65.5	65.5	39.0	54.3
1985	64.8	76.3	54.5	70.9	71.8	49.4	61.0
1987	65.6	76.2	56.0	72.4	74.5	51.9	65.2
1995*	67.2	75.3	59.8	79.2	81.0		
2000*	67.8	74.7	61.5	82.3	84.2		

SOURCE: Statistical Abstract, 1989, pp. 376, 386.
NOTE: Civilian noninstitutional population 16 years old and older.
*Projected.

for married women. In 1987, 56.8 percent of married women with preschool children and 70.5 percent of divorced women with preschool children worked at least part time outside the home.[220] Labor force participation rates of men have declined slightly during this time period. As shown in Table 29, labor force participation rates for women are projected to continue to increase through 2000, but at a decreasing rate.

Family structure has a major effect on family income. In 1987, the median income of all families was about $31,000. For married couples with the wife employed, it was $41,000; with the wife out of the labor force, it was $27,000. Married couples with children had a median income of $36,000; female family heads with children had a median income of $11,000.[221]

The rate of poverty remains far above the 1973 low.[222] Poverty among the elderly has declined, but poverty among children has increased.[223] In 1986 about 15 percent of all families with children were poor, but 46 percent of female-headed families with children were poor.[224] The rate of poverty among blacks and Hispanics is much higher than among whites. In 1987, 10.5 percent of whites, 28.2 percent of Hispanics, and 33.1 percent of blacks were poor.

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220 Ibid., p. 386.

221 Ibid., p. 448.

222 Economic Report of the President, transmitted to the Congress February 1990, U.S. Government Printing Office, (Washington: 1990), p. 167.

223 Statistical Abstract, 1989, p. 454.

224 Ibid., p. 456.

Ethnic minorities will make up an increasing proportion of the working population, and particularly of the younger population, because of immigration and higher birth rates among minority groups. Between 1988 and 2000, two-thirds of new entrants into the labor market will be Hispanic, Asian, black, or female.[225]

Education requirements for jobs will continue to rise, but educational attainments of the population are not growing commensurately.[226] High school completion rates have remained about constant since 1973, though they have increased for blacks during the period. College graduation rates have actually decreased since 1977. Hispanics' high school completion rates and both blacks' and Hispanics' college completion rates lag far below those of whites.

How will these changes affect television viewing? The largest and probably most important change has been the increasing percentage of women in the labor force. Women aged 18-49 are a demographic group highly valued by advertisers, and this age group has experienced the greatest increase in labor force participation. A probable reduction in daytime viewing is an obvious result, but a decrease in leisure time for these women, and other family members as well, will probably also reduce viewing at other times.

Slower population growth will also mean that the potential audience will grow more slowly than in the past. An aging population will have implications for program tastes, which will be particularly important for advertiser-supported broadcasters since older age groups will have higher incomes than in the past and should be more attractive to advertisers. More importantly, possibly, an older population will mean a larger percentage of the population working and smaller daytime audiences. A larger percentage of foreigners in the population may mean less interest in mainstream programming and more time spent watching foreign-language videocassettes, for instance.

Changes in family structure may result in a population that will be increasingly divided between well-off single-person and two-earner households and struggling single-parent families. Two-earner families will have the income to buy advanced electronic equipment and program services, but not necessarily the leisure to use them. Single-parent families, on the other hand, are likely to lack the resources to purchase expensive services, which will work to the advantage of broadcast television. A mismatch between the increasingly sophisticated skills needed and those available in the work force may similarly divide the population into economic strata and affect purchase of program services.

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225 Economic Report of the President, 1990, p. 148.

226 Ibid., pp. 149-153.

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